Algernon Crofton
F. L. Guerena

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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 182

W. A. COCKRILL AND S. IKADA, PLAINTIFFS IN ERROR,

vs.

PEOPLE OF THE STATE OF CALIFORNIA

IN ERROR TO THE DISTRICT COURT OF APPEAL FOR THE THIRD APPELLATE DISTRICT OF THE STATE OF CALIFORNIA

FILED SEPTEMBER 27, 1923

(29,890)

(1) Act Jap father [illegible] gift by Court.
(2) Act of [illegible] when guardianship of children forbidden.

(29,890)

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INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 28, 1924

[fol. 1-4] IN THE

SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SONOMA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

W. A. COCKRILL and Y. AKADO, Also Known as S. IKADA, Defendants

SECOND AMENDED INDICTMENT—Filed Jan. 30, 1922

W. A. Cockrill and Y. Akado, also known as S. Ikada, are accused by this Second Amended Indictment filed in the above entitled Court this 30th day of January, 1922, by the District Attorney of Sonoma County, of the crime of conspiracy to effect a transfer of real property in violation of the Alien Land Law of the State of California; the original indictment in which said defendants are accused by the Grand Jury of Sonoma County, State of California, being found on the 15th day of November, 1921, accusing said defendants with the crime of conspiracy to effect a transfer of real property in violation of the Alien Land Law of the State of California. That said crime of *consiracy* to effect a transfer of real property in violation of the Alien Land Law of the State of California was committed as follows:

That the said defendants, W. A. Cockrill and Y. Akado, also known as S. Ikada, on or about the 19th day of September, 1921, at and in the said County of Sonoma, State of California, did then and there wilfully, unlawfully and feloniously conspire together to effect a transfer of agricultural and farming real estate, land and property, in the County of Sonoma, State of California, and an interest therein, and did so wilfully, unlawfully and feloniously take and enter into [fol. 5] an agreement to purchase certain agricultural and farming real estate, land and property from Bartholomeu C. Souza and Mary C. Souza in the name of said defendant, W. A. Cockrill, for the use, benefit, enjoyment, possession, occupation and control of said Y. Akado, also known as S. Ikada, and paid thereon, on the purchase price thereof, the sum of one hundred and fifty dollars, lawful money of the United States, which said money so paid on said purchase price was paid by said defendant Y. Akado, also known as S. Ikada; said Y. Akado, also known as S. Ikada, being then and there an alien and a subject of the Empire of Japan, and not being then and there an alien eligible to citizenship under the laws of the United States, and there not being then and there any treaty existing between the Government of the United States and the Government of the Empire of Japan, providing for the acquiring, possessing, enjoying, owning and transferring agricultural and farming real estate and property, or any interest therein. That said agricultural and farming real estate, land and property, which said defendants, W. A. Cockrill and Y. Akado, also known as S. Ikada, conspired to

effect a transfer of, and an interest therein, as aforesaid, was, a
is not acquired in the enforcement nor in the satisfaction of any l
existing upon said agricultural and farming land and property
interest in such property. That said agreement to purchase s
land and property hereinbefore set forth was taken in the name
defendant, W. A. Cockrill, for the use, benefit, ownership, enj
ment, possession, occupation and control of said Y. Akado, a
known as S. Ikada, with the intent and for the purpose of preve
ing, evading and avoiding the escheating of said land and prope
to the State. Said W. A. Cockrill not having then and there
[fol. 6] interest in said land and property in fee or otherwise.

Contrary to the form, force and effect of the Statutes in such
made and provided, and against the peace and dignity of
People of the State of California.

G. W. Hoyle, District Attorney of said County, by
Campbell, Assistant District Attorney.

Dated January 30, 1922.

The names of the witnesses examined before the Grand Ju
John A. Anderson, W. Grindle, M. Acorne, J. H. Gallagher,
Pedersen, Earl Doss, Robert Magetti, Dr. L. H. Snow, W. A. C
rill, Bartholomeu Souza, Mrs. Mae Souza, Doctor H. S. Rogers.

[File endorsement omitted.]

[fol. 7] IN THE SUPERIOR COURT SONOMA COUNTY

[Title omitted]

MOTION TO SET ASIDE SECOND AMENDED INDICTMENT—
Filed Jan. 27, 1922

Now come the defendants above named, W. A. Cockrill and
Akado, and move the above entitled Court to set aside the se
amended indictment in the above entitled cause, upon the follo
grounds, viz:

I

That said second amended indictment is not found or ind
or presented as prescribed in the Penal Code of the State of
fornia.

II

That said second amended indictment is not found, indorsed
presented as prescribed in the Penal Code of the State of Calif

III

That the names of the witnesses examined before the grand
or whose depositions may have been read before them are n

serted at the foot of said second amended indictment, or indorsed thereon.

IV

That the requisite number of ballots was not drawn from the jury box of the County of Sonoma in the drawing of said grand jury.

V

[fol. 8] That the notice of the drawing of the grand jury was not given in the manner provided by law.

VI

That the drawing of the grand jury was not had in the presence of the officers designated by law.

Dated January 30, 1922.

Algernon Crofton, Chas. A. Wetmore, Jr., Attorneys for said Defendants.

[File endorsement omitted.]

[fol. 9] IN THE SUPERIOR COURT SONOMA COUNTY

[Title omitted]

DEMURRER—Filed Jan. 27, 1922

Now come the defendants above named, W. A. Cockrill and Y. Akado, and demur to the second amended indictment in the above entitled cause and for grounds of demurrer they specify:

I

That the Grand Jury by which said second amended Indictment was found had no legal authority to inquire into the offense charged by reason of its not being within the legal jurisdiction of the County of Sonoma.

II

That said amended indictment does not substantially conform to the requirements of sections nine hundred fifty, nine hundred fifty one and nine hundred fifty two of the Penal Code of the State of California.

III

That the facts stated in said amended indictment do not constitute a public offense.

Wherefore said defendants pray that they be hence dismissed and that their bail be exonerated.

[fol. 10] Algernon Crofton, Chas. A. Wetmore, Jr., Attorneys for said Defendants.

[File endorsement omitted.]

[fol. 11] IN THE SUPERIOR COURT SONOMA COUNTY

[Title omitted]

ORDERS OVERRULING MOTION TO SET ASIDE AND DEMURRER—Filed Feb. 2, 1922

Defendants are charged with conspiring to effect a transfer of real property or an interest therein in violation of the initiative measure known as the "Alien Land Law."

The portion of said act upon which the indictment rests is as follows:

"Sec. 9. Every transfer of real property, or of an interest therein though colorable in form, shall be void as to the State and the interest thereby conveyed or sought to be conveyed shall escheat to the State if the property interest involved is of such a character that an alien mentioned in section two hereof is inhibited from acquiring, possessing, enjoying or transferring it, and if the conveyance is made with intent to prevent, evade, or avoid escheat as provided for herein.

A prima facie presumption that the conveyance is made with such intent shall arise upon proof of any of the following groups of facts:

(a) The taking of the property in the name of a person other than the persons mentioned in section two hereof if the consideration [fol. 12] is paid or agreed or understood to be paid by an alien mentioned in section two hereof."

The amended indictment sets out all the substantive matter contained in the initiative measure. If a public offense is not stated by the indictment as amended, then it must be conceded that none could be stated because of an omission to penalize the acts complained of. The indictment is now free from technical objections.

The Court will not enter upon an elaborate discussion of the important questions presented inasmuch as it is the evident intent of the parties to present the entire question to the courts of dernier resort.

The initiative act was doubtless framed, among other things for the purpose of preventing persons held to be ineligible to hold land from doing indirectly and by subterfuge that which is expressly forbidden. It also provides for the punishment of anyone who

lends himself as a party to a scheme of evasion and who would not otherwise suffer punishment. It is also the intent of said initiative act to prevent lands from being immediately, or at all, occupied, controlled and enjoyed by proscribed aliens under color of right, and to also prevent lands, if so held or occupied, from reverting at once to the state and becoming thereby open to occupancy and real ownership by persons laboring under no legal disability. In other words the purpose of the act is to prevent agricultural land from being withdrawn from the ownership, use and occupancy of eligible persons and to penalize those who seek illegally to delay the right of ownership and occupancy by those entitled to enjoy the same.

The Court is of the opinion that it is competent for the legislature, or for the people by initiative act to punish as an offense a conspiracy to commit a forbidden act even though the commission of the main act be not made punishable by imprisonment but which [fol. 13] is made punishable by the forfeiture of the property involved in the transaction, which in this case is real property.

The constitutionality of the act is necessarily involved. Indisputably the sovereign power of nations gives them the right to exclude any class of aliens which may be deemed to be hurtful or subversive of national welfare or purpose. It is the accepted law of this country that subjects of foreign powers may be denied the right of citizenship or excluded altogether from our shores. This being so, it would logically follow that it would be competent under the sovereign power of the nation to deny the right of acquiring ownership in real property to those certain members of excluded races who may have gained the right to remain in this country by reason of having acquired such right prior to the passage of exclusion alien acts, provided no treaty rights are thereby violated. Whether the states independently of national legislation have the power to regulate the ownership of land in the manner here attempted, is one of the important questions presented. It involves a question of constitutional law that has been very learnedly discussed by statesmen and law writers. Such is the question that now presses for a concrete definite answer.

As a conclusion the Court is of the opinion that the constitutionality of the act must be upheld. The motion to set aside is denied and the demurrer overruled. It is so ordered.

Emmet Seawell, Judge.

[File endorsement omitted.]

[fol. 14] IN THE SUPERIOR COURT SONOMA COUNTY

[Title omitted]

MINUTE ENTRIES

This cause came on regularly this day in open court for arraignment, Assistant District Attorney Ross Campbell appearing for the

people, by consent, defendants' attorney did not appear. By order of the Court, motion to strike out and demurrer filed on January 27th, 1922 are considered as filed of this date as to Second Amended Indictment filed January 30th, 1922. Comes now the Court and orders that the motion be, and same is hereby denied, and that the demurrer be, and same is hereby overruled. Said defendants were thereupon arraigned under their true names, being asked by the Clerk and replying that their true names were W. A. Cockrill and Y. Akada, by having the Second Amended Indictment read to them and a certified copy of same furnished them by the Clerk of the Court. The Court thereupon asked defendants if they were ready to plead. Said defendants waived time and pleaded "Not Guilty."

[fol. 15] IN THE SUPERIOR COURT SONOMA COUNTY

[Title omitted]

COURT'S INSTRUCTIONS TO JURY

The Court: The Defendants, W. A. Cockrill and S. Ikada, are charged by an Amended Indictment filed in this Court against them, and which has been read to you, with the offense of conspiring together to effect a transfer of agricultural and farming real estate, land and property, and an interest therein, in violation of the provisions of the Alien Land Law of the State of California.

You are instructed that the defendants are, and each of them is, presumed to be innocent of the crime charged in the indictment; and the jury must give them and each of them the benefit of this presumption of innocence at all times in your consideration of a verdict and you must examine the evidence in the light of that presumption. You have no right to set aside or disregard this presumption of innocence until and unless you are convinced beyond all reasonable doubt and to a moral certainty that the defendants are, and each of them is, guilty as charged in the indictment.

[fol. 16] I instruct you that the Constitution of the United States provides that all persons born in the United States are citizens of the United States and are entitled to the equal protection of the laws. If, therefore, you find that any children of Y. Ikada, defendant, were born in the United States, I instruct you that those children were at the time of the transaction citizens of the United States, entitled to all the rights and privileges of citizenship, and that those children cannot be discriminated against because of the nationality of their father, and that such children in being native born, have all the rights and privileges as to holding title to land which are possessed by any other American citizen.

Section 1 of the Alien Land Law of this state provides that all aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit and inherit real property or any interest therein, in this state, in the same manner and to the

same extent as citizens of the United States, except as otherwise provided by the laws of this state.

Section 2 of the Alien Land Law of this state provides that all aliens other than those mentioned in section one of the Alien Land Law (which has just been read to you) may acquire, possess, enjoy and transfer real property, or any interest therein, in this state, in the manner and to the extent and for the purpose prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise.

Section 9 of the Alien Land Law of this state provides that every [fol. 17] transfer of real property, or of any interest therein, though colorable in form, shall be void as to the state, and the interest thereby conveyed or sought to be conveyed, shall escheat to the state, if the property interest involved is of such a character that an alien mentioned in section two hereof is inhibited from acquiring, possessing, enjoying or transferring it, and if the conveyance is made with intent to prevent, evade or avoid escheat.

A prima facie presumption that the conveyance is made with intent to prevent, evade or avoid escheat, shall arise if the property is taken in the name of a person other than the persons mentioned in section two of said Alien Land Law, if the consideration is paid or agreed or understood to be paid by an alien mentioned in section two of said Alien Land Law.

Section 10 of said Alien Land Law provides that if two or more persons conspire to effect a transfer of real property or of an interest therein, in violation of said Alien Land Law, they are punishable by a fine, or by imprisonment or by both.

Article I of the treaty between the United States and Japan provides that the citizens or subjects of each of the high contracting parties shall have liberty to enter, travel, and reside in the territories of the other, to carry on trade, wholesale and retail, to own or lease, and occupy houses, manufactories, warehouses and shops, to employ agents of their choice, to lease land for residential or commercial purposes.

The treaty between the United States and Japan does not give the citizens or subjects of either the right to own, lease or occupy agricultural or farming real estate land and property in the territory of the other.

I instruct you that a Japanese, born in Japan or in any country without the territorial jurisdiction of the United States is an alien not eligible to citizenship under the laws of the United States, and [fol. 18] that since the Alien Land Law of California went into effect on December 9, 1920, a Japanese, born in Japan, or in any country without the territorial jurisdiction of the United States, has been inhibited from acquiring, possessing, enjoying and transferring agricultural real estate or any interest therein.

The jury are instructed that a conspiracy is an agreement between two or more persons to commit an unlawful act, or to commit a lawful act by unlawful means.

The Alien Land Law providing that a prima facie presumption arises, that a conveyance of real property, or an interest therein, is made with intent to prevent, evade or avoid escheat of such real property to the State, if conveyed or transferred to a person entitled to acquire, possess, enjoy and transfer real property, or an interest therein, if the consideration is paid or agreed or understood to be paid by an alien not entitled to acquire, possess, enjoy and transfer real property, or an interest therein; I charge you that if you find from the evidence that a conveyance or agreement to convey real property or an interest therein, was made to a person entitled to acquire, possess, enjoy and transfer agricultural real estate, or an interest therein and you further find from the evidence that the consideration was paid, or agreed or understood to be paid by an alien not entitled under the law to acquire, possess, enjoy and transfer agricultural real estate, or an interest therein, that the burden of proving that such conveyance or agreement to convey such agricultural real estate or an interest therein was not made with intent to prevent, evade or avoid an escheat of said land to the state, is upon those persons claiming that it was not made with such intent.

I instruct you that under the law, an alien not eligible to citizen- [fol. 19] ship, and who under the provisions of the Alien Land Law, is inhibited from acquiring, possessing, enjoying and transferring agricultural land and property in the event that agricultural land and property is deeded to such alien, will under such deed take title to said land and property and can hold the same as against every one, excepting the state, and as against the state until proceedings are instituted and a judgment or decree be had escheating such land to the state.

I instruct you that it is no defense to a charge of conspiracy to effect a transfer of agricultural real estate, or an interest therein, to an alien inhibited from acquiring, possessing, enjoying and transferring such real property, that a deed conveying such real property has not been executed and delivered, or that the deal effecting such transfer has not in fact been consummated, for under the law a conspiracy to commit an act prohibited by law is just as much an offense whether the act conspired to be committed is actually accomplished, or not. In other words the crime of conspiracy is an agreement between two or more persons to commit an unlawful act, or a lawful act by unlawful means, and it is not requisite to the commission of the crime of conspiracy that the act conspired to be committed was in fact committed.

I instruct you that if you are convinced by the evidence, beyond a reasonable doubt, that the defendant S. Ikada is an alien not eligible to citizenship, and that the defendant W. A. Cockrill, and said defendant S. Ikada, conspired together to secure a transfer of agricultural or farming land and property, or an interest therein, from Bartholomew C. Sousa, and May Sousa, his wife, and that such transfer of such land and property, or any interest in such land and property, was taken in the name of the defendant W. A. Cockrill, to the end that the defendant S. Ikada, might acquire, control,

possess and enjoy the issues and profits arising out of the same, then [fol. 20] I instruct you that your verdict should be guilty as charged.

I instruct you as a principle of law that an agreement for the sale of real estate, properly executed and delivered by a person owning such real property and upon which a payment has been made, gives the party making such payment an interest in such real property to the extent of the payment made, until such time as he may forfeit his right by failure to comply with the terms of such agreement.

I instruct you that the appointment of a guardian is not a necessary prerequisite to a minor child taking title to real property.

I instruct you that under the law of California a Japanese father may purchase real estate for his native born child, and that it is legal for him to pay the purchase price of any piece of real estate and to cause title to be taken in the name of the child. If, therefore, you find or believe from the evidence in this case that the defendant Akado, intended that the real estate in question was to be purchased for his native born children or any of them, or was to be held in trust for his children or any of them or was to be transferred by a trustee to his native born children or any of them, then you must acquit the defendants, and I further instruct you that even if the evidence submitted in this case leaves you with a reasonable doubt as to whether the defendant Akado, intended to take title to the real estate in his own name or in the name of his native born children or any of them, you must acquit the defendants.

I instruct you that under the law of California it is not a crime for a man to act as trustee for the purpose of conveying real estate to a native born child, whether the child be of Japanese parentage, or not. If, therefore, you believe from the evidence, or if you enter- [fol. 21] tain a reasonable doubt thereof, that the defendant Cockrill intended to hold the real estate in question for the benefit of the native born children of the defendant Akado, or intended to transfer the title to these children, said property to be held and owned by them, or either of them then you must acquit the defendants.

I instruct you that the act of a Japanese in securing a conveyance of land to his child for the use and benefit of such child, because the laws of the State do not permit him to buy it himself, is in no sense unlawful where the child is born in the United States and thus a citizen. Therefore, unless you are convinced beyond all reasonable doubt that the defendants did not intend to convey the land to the children, or to a trustee for the children as and for their property but intended to convey the land or an interest therein to the Japanese father, you must acquit the defendants.

I instruct you that it is legal in California for a Japanese father to act as guardian of the person and estate of his native born child, and such child may legally hold farming land in California, and I further instruct you that such land may be paid for by the father and held by the child and that it would not be a violation of the Alien Land Law for the father to act as guardian of the estate of such child. If, therefore, you believe from the evidence in this

case that it was the intention of the defendant Akado, that title to the land should be taken in the name of his native born children or that the defendant, Akado, intended that the defendant Cockrill should hold the land as trustee for the children, you must find both defendants not guilty.

I instruct you that conspiracy requires the joint cooperation of two or more persons. One person alone cannot commit or form a conspiracy. Therefore, in this case before you can legally find the defendants guilty you must believe that both defendants Cockrill and [fol. 22] Ikado had a guilty intention to violate the law, and even if you should believe beyond all reasonable doubt that one of the defendants intended to violate the law you cannot convict him of the crime of conspiracy unless you find the other defendant also had a guilty intent. To constitute conspiracy the concurrence of two minds operating in concert is necessary.

I instruct you that if the acts done by the defendants are as consistent with a theory of innocent or legal intent, as they are with a theory of illegal intent, it is your duty to acquit the defendants. If, therefore, you should entertain a reasonable doubt as to whether the intentions of Akado were in furtherance of a lawful or unlawful purpose you are to give him the benefit of such doubt and acquit him.

The Court further instructs the Jury that if upon any reasonable hypothesis they can reconcile the evidence in the case with the innocence of the defendants it would be your duty so to do and acquit the defendants.

The Court instructs you that the law presumes every man to be innocent until his guilt is established beyond a reasonable doubt, and this presumption attaches at every stage of the case, and to every fact essential to a conviction. But by reasonable doubt is not meant every possible or fanciful conjecture that may be suggested. Everything relating to human affairs, and depending upon moral evidence, is open to some fanciful doubt or conjecture. By a reasonable doubt is meant that state of the case which, after an entire comparison and consideration of all the evidence, leaves the minds of the jurors in such condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.

In connection with the general subject of proof for the establishment of facts, the jury are instructed that there are two general classes [fol. 23] of evidence, namely:

Direct, or what is sometimes called positive evidence, and

Indirect, or circumstantial evidence.

Direct evidence is that which proves the fact in dispute directly without an inference or presumption, and which in itself if true, conclusively establishes that fact.

Indirect evidence is that which tends to establish the fact in dispute by proving another, and which, though true, does not of itself conclusively establish that fact, but which affords an inference or presumption of its existence.

Indirect evidence is of two kinds:

1. Inferences, and

2. Presumptions.

Inferences and presumptions, as herein defined and when warranted, are just as much evidence as are the facts from which they may be drawn.

An inference is a deduction which the reason of the jury makes from the facts proved, without an express direction of law to that effect.

A presumption is a deduction which the law expressly directs to be made from particular facts.

An inference must be founded: (1) On a fact legally proved; and (2) On such a deduction from that fact as is warranted by a consideration of the usual propensities or passions of men, the particular propensities or passions of the person whose act is in question, if any such are shown, the course of business or the course of nature.

Any fact in dispute may be established either by direct or indirect evidence, or by both.

The Court instructs you that a witness wilfully false in a material part of his testimony is to be distrusted in others.

The jury are the sole judges of the evidence. It is for them alone, in the exercise of legal discretion, and in subordination to the rules [fol. 24] of evidence, to judge of the credibility of the witnesses, of the weight to be given to the evidence, and of its effect and conclusiveness to establish any fact for which it is offered. In so doing they must consider the character and appearance of the witnesses, the consistency and reasonableness of their statements; and from these and such reasons as may have appeared to the jury upon the case presented, they may judge and determine as to the credibility, weight, effect and sufficiency of such testimony.

You are not obliged to find a verdict in accordance with the testimony of any witness, or any number of witnesses, unless the testimony of such witness or witnesses carries conviction to your minds; but you are not at liberty to disbelieve the evidence as jurors, if you believe it as men; you are not to throw aside any consideration connected with the testimony which is brought to bear in your judgment as men, simply because you are now jurors; while you are to be prudent and cautious, and give to the defendant the benefit of every reasonable doubt, you are not to hesitate in the performance of your duty by reason of any peculiar method of considering testimony or evidence which you may think may belong to you as jurymen, but which would not belong to you as men.

If you are entirely satisfied from the evidence that the defendant is guilty of the offense charged in the information, you should so find by your verdict.

I instruct you that it is the duty of every juror to carefully consider all the evidence of the case, attempting to arrive at a true and a just verdict, based upon the evidence and the instructions of the Court, and in arriving at your verdict, you, and each of you, have the right to stand by your own independent judgment as to the weight, sufficiency and effect of the evidence in the case, but it is the duty of [fol. 25] every juror to reason with his fellow jurors, to the end that he may join in a lawful verdict.

The law presumes that a witness speaks the truth in a court of justice. This presumption, however, may be repelled by the manner in which the witness testifies; by evidence affecting the reputation of the witness for truth, honesty or integrity, or the motive of the witness; or by contradictory evidence, or by evidence that he has made at other times statements inconsistent with his present testimony; and the jurors are the exclusive judges of the credibility of the witness and the weight to be given to the evidence.

[fol. 26] IN SUPERIOR COURT SONOMA COUNTY

[Title omitted]

VERDICT

The jury returend into the Court and rendered the following verdict, to-wit:

We the jury find the defendants guilty as charged.

Robert E. Larimer, Foreman.

Dated June 27, 1922.

[fol. 27] IN THE SUPERIOR COURT SONOMA COUNTY

[Title omitted]

JUDGMENT AND COMMITMENT—Filed June 30, 1922

The time appointed by the Court for rendering judgment herein having arrived, Now comes into open Court the District Attorney of the County of Sonoma and the defendants W. A. Cockrill and S. Ikada and his counsel Algernon Crofton.

The defendant is duly informed by the Court of the Second Amended Indictment against him on the 30th day of January, A. D. 1922 charging him with the crime of conspiracy to effect a transfer of real property in violation of the Alien Land Law of the State of California; of his arraignment and plea of "Not Guilty of the offense charged in this indictment," of his trial, and the verdict of the Jury rendered on the 27th day of June, A. D. 1922. The defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him. He replied through his counsel making a motion for arrest of judgment, same being denied. He thereupon made a motion for a new trial and same being denied. And no sufficient cause being alleged or appearing to the Court why judgment should not be pronounced, the Court renders its judgment as follows:

That Whereas, the said W. A. Cockerill and S. Ikada have been legally tried and convicted in this Court of the crime of conspiracy

to effect a transfer of real property, in violation of the Alien Land [fol. 28] Law of the State of California, It is therefore ordered, adjudged and decreed: That the said W. A. Cockrill and S. Ikada be punished by a fine of Seven Hundred & Fifty ($750.00) dollars ease, and in default of payment of said fine be imprisoned in the County Jail, County and State aforesaid, until said fine is satisfied at the rate of one day for every two dollars ($2.00) said fine, not to exceed in all 375 days imprisonment. The defendant is remanded to the custody of the Sheriff of Sonoma County, State of California.

STATE OF CALIFORNIA:

IN THE SUPERIOR COURT IN AND FOR THE COUNTY OF SONOMA

The People of the State of California to the Sheriff of the County of Sonoma, State of California, at Santa Rosa, Greeting:

Whereas, W. A. Cockrill and S. Ikada having been duly convicted in our Superior Court, in and for the County of Sonoma, of the crime of Conspiracy to Effect a Transfer of Real Property in Violation of the Alien Land Law of the State of California, and judgment having been pronounced against him, as aforesaid. All of which appearing to us of record, and a certified copy of the judgment being endorsed hereon and made a part hereof,

Now this is to Command You, the said Sheriff of the County of Sonoma, to take and keep the said W. A. Cockrill and S. Ikada convicted and sentenced as aforesaid, and they, the said W. A. Cockrill and S. Ikada keep and imprison in the said County Jail of Sonoma County, State of California, as aforesaid. And these presents shall be your authority for the same.

Herein fail not.

Witness: Hon. Emmet Seawell, Judge of the said Superior Court, [fol. 29] at the Court House in the county of Sonoma, and the seal of said Court affixed this 30th day of June, A. D. 1922.

W. W. Felt, Jr., Clerk, by Chas. T. Byington, Deputy Clerk.

[File endorsement omitted.]

[fol. 30] IN THE SUPERIOR COURT SONOMA COUNTY

[Title omitted]

PETITION FOR APPEAL—Filed July 5, 1922

To the above-entitled Court:

The defendants herein, W. A Cockrill and S. Ikada, hereby give notice that they have heretofore by oral notice given by their counsel Algernon Crofton, Chas. A. Wetmore, Jr., and Frank Dur-

yea, appealed and that they do hereby appeal from the order of the above entitled court made on June 30, 1922, denying their motion for a new trial for both and for each of them, and also from the final judgment of conviction, rendered herein on June 30, 1922, against both and each of them.

The grounds and points of the said appeal from the said order denying the motion for a new trial are as follows:

(a) That the Court misdirected the jury in a matter of law.

(b) That the Court erred in the decision of a question of law arising during the course of the trial.

(c) That the verdict is contrary to law.

(d) That the verdict is contrary to the evidence.

The grounds and points of the said appeal from the final judgment of conviction are as follows:

(a) That the Grand Jury which found the indictment had no [fol. 31] legal authority to inquire into the offense charged.

(b) That the Court was without jurisdiction to try the case.

(c) That the facts stated do not constitute a public offense.

(d) That the indictment contained matter which if true would constitute a legal excuse of the offense charged.

(e) And all the grounds hereinbefore stated as grounds for the appeal from the order denying defendants' motion for a new trial.

(f) That inadmissible and prejudicial statements were made by witnesses for the prosecution.

(g) That the deputy district attorney made statements to the jury in his closing argument which were improper and prejudicial to the defendants and which prevented them from having a fair and impartial trial.

Respectfully submitted, Algernon Crofton, Charles A. Wetmore, Jr., Attorneys for Defendants.

[File endorsement omitted.]

[fol. 32] IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, THIRD APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

W. A. COCKRILL and S. IKADA, Defendants and Appellants

ASSIGNMENT OF ERRORS

I

The Court erred in reading to the jury as an instruction Section 9 of the Alien Land Law.

II

The Court erred in instructing the jury that any burden of proof was upon defendants, as follows: "The burden of proving that such conveyance or agreement to convey such agricultural real estate or an interest therein was not made with intent to prevent, evade or avoid an escheat of said land to the State, is upon those persons claiming that it was not made with such intent."

1. The portion of Section 9 of the Alien Land Law which attempts to create a prima facie presumption is unconstitutional. The constitutional provision violated is the right of the Japanese father to the equal protection of the laws guaranteed by Section I, Article XIV of the Constitution of the United States.

2. The portion of Section 9 of the Alien Land Law which at-[fol. 33] tempts to create a prima facie presumption is violative of the Japanese-American Treaty of 1911. The treaty provision violated is the right of the Japanese father to enjoy the same rights and privileges as native citizens in respect to his person and property, guaranteed by Article I of the Japanese-American Treaty of 1911.

[fol. 34] IN THE DISTRICT COURT OF APPEAL OF CALIFORNIA

[Title omitted]

OPINION—Filed April 30, 1923

The judgment and order are affirmed. Hart, J.

We concur. Burnett, J. Finch, P. J.

Clerk's certificate to the following opinion omitted in printing.

[fol. 35] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

ORDER OVERRULING PETITION FOR HEARING

By the COURT:

The petition to have the above entitled cause heard and determined by this Court after judgment in the District Court of Appeal of the Third Appellate District is denied. (Justice Seawell, having been trial judge, does not participate herein.)

Dated June 28, 1923.

Wilbur, C. J.

Clerk's certificate to foregoing paper omitted.

[fol. 36] IN THE DISTRICT COURT OF APPEAL OF CALIFORNIA

[Title omitted]

JUDGMENT—Entered April 30, 1923

And now, at this day, this cause being called, and having been heretofore submitted and taken under advisement, and all and singular the law and premises having been fully considered, the opinion of the Court herein is delivered by Hart, J.

Whereupon, it is ordered, adjudged and decreed by the Court that the judgment and order of the Superior Court in and for the County of Sonoma in the above entitled cause, be and the same are hereby affirmed.

(Here follows a copy of the opinion herein of the District Court of Appeal of the State of California, Third Appellate District, the same being attached to this transcript.)

Clerk's certificate to foregoing paper omitted.

[fol. 37] IN THE DISTRICT COURT OF APPEAL OF CALIFORNIA

[Title omitted]

Appeal by Defendants from a Judgment of the Superior Court of Sonoma County, Emmet Seaweli, Judge, of Conviction of Conspiracy to Violate the Alien Land Law.

Affirmed

OPINION

For Appellants—Chas. A. Wetmore, Jr.; Gillogley, Crofton & Payne; Frank A. Duryea.

For Respondent—U. S. Webb, Attorney General; J. Chas. Jones, Deputy Attorney-General.

The defendants, Cockrill, a lawyer by profession, and Akada, a native of Japan, were indicted by the grand jury of Sonoma County for the crime of conspiring to cause or effect the transfer of real property to an alien ineligible to citizenship under the laws of the United States, in violation of the provisions of an initiative act adopted by the People at the general election held on November 2, 1920, and designated and known as the "Alien Land Law."

The defendants demurred to the indictment on general and special grounds and also moved to set it aside for alleged statutory reasons. The motion was disallowed, but the district attorney, conceding the force of the demurrer in a certain particular, was, upon motion, allowed to amend the indictment. Like proceedings were had as to the amended indictment, and, by leave of the court, the district attorney again amended the indictment, and it was upon the second [fol. 38] amended indictment that the defendants were finally arraigned, tried and convicted of the crime above stated.

At the time fixed for the arraignment of the defendants for sentence, the latter, though their counsel, interposed a motion in arrest of judgment and also a motion for a new trial, both of which were denied.

The appeal is by the defendants from the judgment and the order denying their application for a new trial.

The transaction out of which this prosecution developed took place on the 26th day of August, 1921, negotiations for its consummation having previously been carried on for several weeks by the defendants with B. C. Souza and Mae C. Souza, his wife, the parties owing the land involved in the transaction. The Souzas were the owners of approximately 30 acres of agricultural land situated near Petaluma, in Sonoma County. When the defendants proposed to purchase the land, the Souzas stated to them that, if the purchase of the land was to be made for Akada himself and the property to be for his own possession, occupation and use, they did not think that the sale could be made under the law, referring, of course, to the

Alien Land Law. Akada and his wife (also a native of Japan) had, prior to the transaction here involved, lived on a farm in Sonoma County for a number of years and during that time several children were born to them, and both Akada and Cockrill declared to the Souzas that the land was to be purchased for the American-born children of said Akada. After considerable discussion of the matter, Cockrill, so the Souzas testified, stated that he had consulted the district attorney of Sonoma County about the transaction and had been advised by that official that if the land was to be pur- [fol. 39] chased for the American-born children of Akada the transaction would be perfectly legal. This statement was positively denied by the district attorney. He testified that no such advice was given by him to Cockrill; that the latter had never consulted him about the matter.

Finally a written agreement for the purchase of the land, dated the 26th day of August, 1921, was entered into between the Souzas and the defendant Cockrill whereby the land was sold to the latter for the sum of $2,250. Upon the execution — this agreement Cockrill paid the vendors the sum of $150. The agreement provided that on the execution of a deed and certificate of title to the property the sum of $1,100 was to be paid and that the balance of the purchase price, $1,000, was "to be covered by a mortgage on said property, said mortgage to be held by parties of the first part (the Souzas) or their assigns". The Souzas, as we have stated, testified that the defendants represented to them at all times that the land was to be purchased for and to be owned by the American-born children of the defendant Akada. Akada furnished the money with which the payments on the land were made.

It appears that the abstract of title disclosed some defects in the title, and on September 24, 1921, Cockrill, representing the Souzas as their attorney, commenced a suit to quiet title in the superior court of Sonoma county. There is no question raised here as to the fact that four of the children of Akada, for whom it was claimed by Cockrill and Akada the land was purchased, were of American birth.

After the action to quiet title was commenced Cockrill was subpœnaed to appear before the grand jury to give testimony as to the [fol. 40] transaction. Before the inquisitorial body he testified that Akada purchased the property for his American-born children; that the contract of sale was taken in Cockrill's name as trustee for said children and that the intention was to complete the transaction by taking a deed in the name of said children and then having a guardian of their estates appointed for them.

It appears that at the time of the several transactions herein referred to, while believing that Akada's native-born children could take title to agricultural lands in this state, and that it was not unlawful for him (Akada) to furnish the money for the purchase of such lands for such purpose, Cockrill was of the opinion that an alien Japanese father could not act as guardian of his children's estate and hence "arrangements were made to have an American citizen appointed as such guardian as soon as the title should be found good and the actual transfer made." Parenthetically, we may say that the

Supreme Court in the case of Estate and Guardianship of Yano, 63 Cal. Dec. 515, decided subsequently to the transactions above referred to, held that an alien incapable of becoming a citizen of this country may not only furnish the money for the purchase of agricultural lands for his American-born children, but may also act as guardian of the persons and estates of such children.

There was testimony to the effect that, upon the execution of the agreement of purchase and sale, the defendant Akada commenced to improve the land by erecting thereon a number of buildings which, aside from the one in which he and his family were to reside, were to be used as "chicken houses." All this testimony was by the court [fol. 41] limited in its application to the defendant Akada. There were also admitted in evidence certain statements made by Cockrill and Akada when testifying before the grand jury regarding the transaction involved herein, as was also an extra-judicial statement by Akada relative to said transaction, in which, however, he declared that the property was bought for his children, but in which he gave what appears to be an inconsistent explanation as to the source from which the money used in purchasing the property came. The above statement embraces, substantially, all evidence of material importance introduced by the people in support of the charge. As to the defense, Cockrill's testimony was all that was received in rebuttal of the showing made by the people, Akada not having been called to testify. Cockrill's testimony consisted of an effort on his part to explain that the transaction involving the purchase of the land was carried on in good faith and according to a conscientious interpretation by him of the provisions of the Alien Land Law and that the intention was to purchase the land for Akada's American-born children.

The defendants advance a number of points on which they claim to be entitled to a reversal of the judgment and the order. Most of these points, while involving challenges of the legal soundness of certain given instructions and the action of the court in disallowing others, proposed by defendants, and rulings of the court as to the admissibility of certain evidence, in reality involve an assault upon certain portions of the Alien Land Law upon the ground of their alleged invalidity. These points we will now proceed to consider.

1. The defendants vigorously contend that, in allowing the purported indictment to be amended, the court committed error in this: [fol. 42] That the indictment, as originally filed, did not state an offense under the act in question, and hence no amendment thereof, even if thus an offence under said law was stated, could make it an indictment, since the situation in such case would be as if the grand jury had not found and presented an indictment against the accused.

The authority for the allowance of amendments of indictments and informations is in section 1008 of the Penal Code, so much of which as is apposite to the present consideration reads as follows: "An indictment or information may be amended by the district attorney without leave of court, at any time before the defendant pleads. Such amendment may be made at any time thereafter, in

the discretion of the court, where it can be done without prejudice to the substantial rights of the defendant. An indictment cannot be amended so as to change the offense charged, nor an information so as to charge an offense not shown by the evidence taken at the preliminary examination."

The particulars in which it is claimed that the indictment as originally filed was insufficient because of the want of facts or in the statement of the offense thereby sought to be charged are as follows:

"First, the indictment did not charge that the land involved was agricultural land or that it was not land which an alien Japanese might acquire for residence or commercial purposes in accordance with the treaty between the United States and Japan;

"Second, the grand jury did not find or charge that the transaction was for the use or benefit in any way of the defendant Akada;

[fol. 43] "Third, the grand jury did not find or charge that the land was not to be acquired for the use and benefit of defendant Cockrill, in whose name the contract was taken;

"Fourth, the grand jury did not find or charge that the contract was not taken, or that the land was not to be finally transferred, in satisfaction of any lien thereof."

Clearly, if the document filed as an amendment in the first instance stated no offense under the Alien Land Law and the purported second amended indictment, upon which the accused were tried, does state such an offense, then it must be held that the purported trial and the conviction of the defendants were coram non judice and absolutely void, inasmuch as the document purporting to be the second amended indictment would be no indictment at all, it not having been found and presented by the grand jury. Nor could the document stand as an information, since the prerequisites of the filing of an information are wanting. (Secs. 809, 872, Pen. Code.)

The primary question, then, is whether the "original indictment" stated an offense under the Alien Land Law; and this question must be determined upon a consideration of certain provisions of said law and certain provisions of the treaty between this government and the Empire of Japan.

The first section of the act in question reads as follows: "All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit and inherit real property, or any interest therein, in this state, in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this state."

Section 2 provides: "All aliens other than those mentioned in [fol. 44] section one of this act may acquire, possess, enjoy and transfer real property, or any interest therein, in this state, in the manner and to the extent and for the purpose prescribed by any treaty now existing between the government of the United States

and the nation or country of which such alien is a citizen or subject, and not otherwise."

Section 7 reads in part as follows: "Any real property hereafter acquired in fee in violation of the provisions of this act by any alien mentioned in section 2 of this act or by any company, association or corporation mentioned in section 3 of this act, shall escheat to, and become and remain the property of the State of California. * * * The provisions of this section and of sections 2 and 3 of this act shall not apply to any real property hereafter acquired in the enforcement or in satisfaction of any lien now existing upon, or interest in such property, so long as such real property so acquired shall remain the property of the alien company, association or corporation acquiring the same in such manner. No alien, company, association or corporation mentioned in section 2 or section 3 hereof shall hold for a longer period than two years the possession of any agricultural land acquired in the enforcement of or in satisfaction of a mortgage or other lien hereafter made or acquired in good faith to secure a debt."

The first part of section 8 contains a similar provision as to escheat in relation to any leasehold or other interest in real property less than the fee acquired in violation of the provisions of the act by any alien mentioned in section 2 of said act or by any alien, company, association or corporation mentioned in section 3. There are other provisions in said section which are not material to this inquiry.

[fol. 45] Section 10, upon which the indictment herein is predicated, reads as follows: "If two or more persons conspire to effect a transfer of real property, or of an interest therein, in violation of the provisions hereof, they are punishable by imprisonment in the county jail or state penitentiary not exceeding two years, or by a fine not exceeding five thousand dollars, or both."

The initial clause of article I of the treaty between the United States and Japan reads as follows: "The citizens or subjects of each of the high contracting parties shall have liberty to enter, travel and reside in the territories of the other to carry on trade, wholesale and retail, to own or lease and occupy houses, manufactories, warehouses and shops, to employ agents of their choice, to lease land for residential and commercial purposes, and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects, submitting themselves to the laws and regulations there established."

It will be noted that sections 1 and 2 of the Alien Land Law describe and designate the classes of aliens competent to acquire and possess real property in this state, the first including all that class of aliens that are eligible to acquire the rights of citizenship in the United States and the second embracing all aliens, whether they are or are not eligible to citizenship of this country, that are entitled [fol. 46] to acquire and possess real property by virtue of the provisions of any treaty between this government and the country of which such aliens are natives guaranteeing such right.

While section 3 is not particularly important to the discussion of the points herein made, it may be explained that it guarantees the right to own real property by such aliens as are not mentioned in sections 1 and 2 as may constitute a majority of the members of any company, association or corporation organized under the laws of this state or any other state or nation or who hold a majority of the issued capital stock of said company, etc., and which corporation is authorized to acquire, possess, enjoy and convey real property or any interest therein in this state, in the manner and to the extent and for the purposes prescribed by any treaty existing at the time of the enactment of said law between the government of the United States and the nation or country of which such members or stockholders are citizens or subjects. Obviously, no other class of aliens ineligible to become citizens of the United States than those classes mentioned in the above sections of the Alien Land Law are entitled to acquire agricultural or farming land in this state.

With the understanding of the provisions of the Alien Land Law and the provisions of the treaty between this government and the government of Japan which are pertinent to the present investigation, we will proceed to an examination of the indictment as it was found and presented by the grand jury to the superior court. That [fol. 47] pleading is in the following language:

"W. A. Cockrell and Y. Akado are accused by the Grand Jury of the County of Sonoma, State of California, by this Indictment, found this 15th day of November one thousand nine hundred and twenty-one of the crime of conspiracy to effect a transfer of real property in violation of the Alien Land Law of the State of California, committed as follows:

"The said W. A. Cockrill and Y. Akado on or about the 19th day of September, nineteen hundred and twenty-one, at and in said County of Sonoma, State of California, that the said defendants W. A. Cockrill and Y. Akado did then and there wilfully, unlawfully and feloniously conspire together to effect a transfer of real property in the County of Sonoma, State of California, and an interest therein, and did so wilfully, unlawfully and feloniously take and enter into an agreement to purchase certain real property from Bartholomeu C. Souza and Mary C. Souza in the name of said defendant W. A. Cockrill and paid thereon on the purchase price thereof the sum of One Hundred and Fifty Dollars, lawful money of the United States, which said money so paid on said purchase price was paid by said defendant Y. Akado, said Y. Akado being an alien and a subject of the Empire of Japan and not being then and there an alien eligible to citizenship under the laws of the United States, and there not being then and there any treaty existing between the Government of the United States and the government of the Empire of Japan providing for the acquiring, possessing, enjoying and transferring real [fol. 48] property or any interest therein, contrary to the form, force and effect of the statute in such case made and provided, and against the peace and dignity of the People of the State of California."

(1) It will be observed that the indictment, as it was originally framed, is, substantially, in the language of section 10 upon which it was founded. It is true that the pleader in preparing the indictment used the word "purchase," which is not employed in section 10, in the place of the word "transfer," which is used in said section in defining the offense. In other words, the indictment, in the place of alleging in that portion thereof directly charging the offense, that the defendants unlawfully, etc., did "conspire to effect a transfer," etc., as is the language of section 10, alleges that the defendants did wilfully, unlawfully and feloniously take and enter into an agreement "to purchase certain real property," etc. But, even in those cases in which the crime may properly be stated in a criminal pleading in the exact language of the statute defining it, a departure from the precise language of the statute in setting forth the crime in an indictment or information will not have the effect of vitiating the pleading if the language employed in such pleading describes the offense sought to be so charged with clearness equal to that of the language of the statute itself. Indeed, the word "purchase," taken alone, and as it is used in the present case, is much more scopeful than would be the word "transfer," taken alone, if it were likewise used. To say that one [fol. 49] had effected the transfer of real property without further explanation or amplification of the proposition would be ambiguous as to the persons by whom and to whom the transfer is made. In the present case, for instance, if there was nothing more in the indictment than the allegation that the defendants had formed a conspiracy to effect a transfer of real property contrary to the provisions of the Alien Land Law, the indictment would be obnoxious to the objection of uncertainty and imbiguity. In fact, it would probably be held not to state an offense under the law. The word "purchase" has a definite and well-understood juridical meaning.

(2) Indeed, its meaning in a juridicial sense is quite synonymous with its signification as it is colloquially used and understood, and when used for the purpose of characterizing a transaction involving property of any kind it is readily to be understood therefrom that there has been an acquisition by one or more parties of the title to such property. "Purchase," states Webster in his dictionary, means "to acquire, to buy for a price." This is undoubtedly the popular meaning. In law, it "includes every mode of coming to an estate except by inheritance." (Greer v. Blancher, 40 Cal. 194, 197.) In Marsh v. Lott, 8 Cal. App. 384, 391, which was a suit for specific performance of a contract of option to buy real property and in which agreement it was covenanted that the proposed vendee was thereby given "an option to purchase" certain real property, the Appellate Court had occasion to interpret the word "purchase" as used in such [fol. 50] agreement and in explaining the meaning of said word said: "By reference to said agreement, we find that she gave plaintiff an option to purchase her property. The word "purchase" implies the acquisition of; so that he (proposed vendee) was given the right to acquire the property of defendant, which in this case could not be otherwise than by a deed of conveyance."

Thus must it readily be seen that, in alleging that the defendants, one of whom was an alien ineligible to citizenship of this country, conspired to purchase certain real property, the indictment stated an offense against which the statute inveighs. In other words, the sum and substance of the charge as laid in the indictment before its amendment was that the defendants, one an alien legally incapable of becoming a citizen of the United States, and the other, as we may assume from his name, a citizen of this country or, if not already one, a person who is eligible to become such, entered into a conspiracy to effect a transfer to themselves of certain real property, contrary to the terms of the Alien Land Law of the state of California and that, in pursuance of the execution of such conspiracy, they committed two distinct overt acts, to-wit:

1. That they entered into a written agreement with the owners of said real property for the acquisition thereof;

2. That on the execution of said agreement, they paid to the vendors, with money furnished by the alleged alien defendant, the sum of $150 on the purchase price. (Sec. 1104, Pen. Code.) Of course, the indictment necessarily means that the intent of the defendants [fol. 51] was to prevent, evade or avoid an escheat as provided in the act.

(3) But, as we have seen, it is urged that, to state an offense under the law in question, it was necessary that there should have been an allegation in the indictment that the real property which it is alleged was purchased by the defendants was agricultural or farming land, or not land which such alien may acquire for residential or commerical purposes. It is to be conceded that, as it was originally framed, the indictment is by no means a model criminal pleading. It is further to be conceded that, since under their treaty rights Japanese aliens may own certain houses, manufactories, shops, etc., and which possibly might be susceptible of the construction that thus they are guaranteed the right to own the land upon which such houses, etc., were erected and are maintained, it would have been the result only of the exercise of wisdom if the pleader, in drafting the indictment, had also alleged that the real property which it is charged that the defendants acquired or entered into an agreement to acquire was agricultural or farming land; still, as is to be understood from what we have said above, we do not think that allegation was indispensably essential to the statement of the offense denounced by section 10 of the act. In construing the indictment we must consider section 10, on which it is based, together with the other provisions of the Alien Land Law and the provision of the treaty between this government and the empire of Japan guaranteeing to alien Japanese certain rights as to real property. Thus viewing the indict- [fol. 52] ment, it seems to us that but one conclusion can follow, and that is that the "real property" which that pleading charges the defendants with having conspired to acquire is the "real property" which the act in question declares that an alien ineligible to citizenship of the United States has no right to acquire or own in this state. The de-

fendants could not have misunderstood the indictment to mean anything else and it must, therefore, be held as true, as we have hitherto declared, that the indictment as it was presented to the superior court by the grand jury, while inartificially phrased, was, in all other respects, sufficient to notify the defendants of the particular offense with which they were charged so that they could not be misled as to its real meaning or placed in such a position as not to be able to meet by any defense they may have the charge of conspiring to effect the transfer of agricultural land to an alien not competent under our laws to become a citizen or acquire the rights of citizenship of the United States. This is all that is required of any criminal pleading. It may be added that the evidence without conflict shows that the "real property" referred to in the indictment was farming land, and that the defendants, from the character of the cross-examination of the witnesses for the prosecution, appeared to have understood that the indictment so charged.

(4) It was not necessary, in the statement of the offense denounced by section 10 of the act in question, to allege that the acquisition of said land was not to be consummated for the purpose [fol. 53] enforcing or satisfying any lien existing upon real property at the time of the enactment of the Alien Land Law. Indeed, the very allegation that the defendants conspired to purchase certain real property itself plainly negatives the existence of the exception relating to the acquisition of real property through the enforcement or satisfaction of any lien or mortgage, provided in section 7 of the Alien Land Law.

The amended indictment added the allegation that the real property concerned herein was agricultural and farming land; that the contract was taken in the name of the defendant Cockrill for the "use, benefit, enjoyment, possession, occupation and control of defendant Akada;" that there was no provision in the treaty between the United States and Japan guaranteeing to Japanese aliens the right to acquire agricultural land. The second amended indictment, in addition to the matters set out in the amended indictment supplied the omission in the amended indictment to state the time at which the alleged crime was committed; that the said land "was and is not acquired in the enforcement or satisfaction of any lien," etc.; that the land was taken in the name of the defendant Cockrill for the use and benefit of the defendant Akada, "with the intent and for the purpose of preventing, evading and avoiding the escheating of said land property to the state;" that defendant Cockrill had no interest in the fee of said land or otherwise.

The only material change made by either amendment was that involved in the allegation that the real property which the defend- [fol. 54] ants conspired to have transferred to themselves was "agricultural or farming land." The other changes were not essential to the statement of the offense. We have already disposed of the proposition that the indictment should have alleged that the land was not acquired in the enforcement or satisfaction of any lien, etc.

The allegation that Cockrill has no interest in the fee is immaterial, since the indictment, as originally presented, alleged that the land was purchased by him and said defendant Akada, thus showing that Akada himself had acquired an interest in the land and that the purpose of the conspiracy or combination between him and Cockrill was to effect that result with respect to said real property.

It is clear that it cannot be held that the change effected in the indictment by the amendment thereof, as above indicated, affected the substance of the crime charged, but merely resulted in stating the offense or the transaction from which it arose in greater detail. Precisely the same offense as was stated in the indictment as it was originally framed is merely set forth with more particularity in the indictment as amended. The substantial rights of the defendants could not, therefore, have been prejudiced by the amendment. (Sec. 1008, Pen. Code.)

We may add that, since the indictment, both as originally filed and as amended, stated the offense designated to be therein charged and the original indictment appearing to have been found, endorsed, returned and presented according to the requirements of the law, the motions to set aside the amended and second amended in- [fol. 55] dictment were properly denied. And for the reasons stated above in holding that the indictment, as originally framed, was exempt from the claims of the demurrer thereto, the motion in arrest of judgment was properly denied.

2. The next assignment which is to be considered is that the court committed error resulting in serious prejudice to the substantial rights of the defendants by incorporating into its charge and thus reading to the jury certain provisions of the Alien Land Law. The provisions made a part of the court's charge to the jury comprehend all of sections 1, 2 and 10 and a portion of section 9 of said act. Sections 1, 2 and 10 are hereinabove reproduced. As to these, as parts of the court's charge, there is no objection suggested. It is, however, objected that it was error from which the defendants sustained serious damage to their substantial rights for the court to have embraced within its charge that portion of section 9 of the act establishing a disputable presumption of the guilt of persons charged under section 10 upon the proof of certain facts. So much of said section as was included within the charge to the jury reads as follows:

"Every transfer of real property, or of an interest therein, though colorable in form, shall be void as to the state and the interest thereby conveyed or sought to be conveyed shall escheat to the state if the property interest involved is of such a character that an alien mentioned in section two hereof is inhibited from acquiring, possessing, [fol. 56] enjoying or transferring it, and if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein. A prima facie presumption that the conveyance is made with such intent shall arise upon proof of any of the following groups of facts:

"(a) The taking of the property in the name of a person other than the persons mentioned in section two hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in section two hereof."

There are three other distinct acts the doing of which, or any one of which, will raise the presumption mentioned. The specific grounds upon which objection is urged against said instruction is: (a) That the said presumption was intended by the legislature to be invoked, and applied exclusively in civil actions authorized by sections 7 and 8 of said act to be brought for the purpose of securing a decree escheating to the state any real property or leasehold interest in such property which has been acquired in violation of the terms of the act; (b) That said portion of section 9 is violative of that part of section 1 of article XIV of the Constitution of the United States which provides that "no state shall deny to any person within its jurisdiction the equal protection of the law"; (c) That it is in direct contravention of the terms of article I, paragraph 3 of the American-Japanese treaty of 1911; (d) That the provision as to said presumption is invalid because, when given as an instruction to a jury in a case arising under section 10 of the act, it contradicts and destroys the effect of the presumption that all [fol. 57] persons accused of public crime are innocent until their guilt is established beyond a reasonable doubt.

(5) (a) The statute does not expressly limit the application of the presumption to any particular action or proceeding which may, by virtue of certain of its provisions, be instituted in the superior court. Nor, as we read the statute, is there any reason arising from the statute itself or from a reasonable construction thereof, which inclines us to the belief that it was the legislative intent that the presumption should have application only to civil cases or proceedings in escheat, as authorized by the act.

Section 1102 of the Penal Code provides that:

"The rules of evidence in civil actions are applicable also to criminal actions, except as otherwise provided in this code."

We know of no other section or provision of the Penal Code whose language is such as to require the conclusion that the application of the presumption in question should not as well be applied to a criminal as a civil action authorized by the act. Hence, we hold that the presumption was properly stated to the jury in the charge of the court in this case.

(b) and (c) The two propositions thus designated hereinabove may be considered together since both involve the general contention that the presumption in question is discriminatory in its operation, in that it is applicable alone to cases in which a particular or single class or race of people is proceeded against in this state in an action in the courts of this state.

(6) But we think it will require but little reflection and no argument to satisfy any mind unfettered by prejudice against the Alien Land Law or unembarrassed by partisanship in favor of those [fol. 58] accused under section 10 in a particular case that, in so far as it applies to criminal cases arising under the act in question, the provision of section 9 as to the conditions upon which the presumption will arise, is neither amenable to the objection that it denies to any person or class of persons within this state the equal protection of the law nor subject to the criticism that it infringes any rights granted to alien Japanese denizens within the state of California by article I, paragraph 3, of the treaty of 1911 between our government and Japan. The only criminal proceeding authorized by the act is that which may arise under section 10 thereof, and that section is, it will be observed, sweeping in its scope. It excepts no one from its operative effect, but by its very language is made to apply to all persons, regardless of their race, nativity or color. If two or more American-born citizens were to conspire to do the act or acts inhibited by said section their conduct in that regard would clearly fall within the condemnation of the section. Indeed no better illustration of the legal soundness of this proposition can be found than in the instant case, in which, as we have reason to know, one of the accused is a native of the United States. In its application to criminal cases arising under section 10 of the act, the prima facie presumption which may arise under the conditions indicated by section 9 is, in its scope and effect, coextensive only with the scope of section 10. The presumption therefore, as a rule of evidence, necessarily applies alike to all persons, irrespective of nativity, race or color, who, by their conduct, come within the ban of section 10. It follows, then, that the rule as to the presumption is not in anywise or in any sense discriminatory as [fol. 59] against any class or race of people or violative of any treaty rights of alien Japanese residing in this state.

The proposition decided in In re Terui, 187 Cal. 20, cited by the appellants, bears no relationship in a legal sense to the points here under consideration. In that case the Supreme Court had before it the question of the constitutionality of an act of the legislature of 1921 imposing upon and exacting from "every alien male inhabitant of this state over twenty-one years of age and under sixty years of age" except certain enumerated incompetents, the payment of an annual poll or head tax of ten dollars. Former Chief Justice Angellotti, voicing the views of the court, held, as quite obviously no other conclusion could justly be announced under such circumstances, that, quoting from the syllabi:

"In view of the provisions of the existing treaty between the United States and Japan, providing, among other things, that the citizens or subjects of neither shall be compelled, under any pretext whatever, to pay any charges or taxes other or higher than those that are or may be paid by native citizens or subjects, the Alien Poll Tax Law of California is ineffective for any purpose with relation to any citizen of Japan."

This is all that was decided in the Terui case and thus readily is it to be perceived that, as stated, it has no application to or bearing upon the points here under discussion.

(d) Finally it is said, as we have seen, that the effect of embracing the presumption in an instruction addressed to a jury in a criminal action based on section 10 is to shift the burden of proof to the accused and so nullify the effect of the rule that the presumption of innocense abides with a defendant in a criminal case until the jury, from the evidence, has been convinced of his guilt beyond all reason-
[fol. 60] able doubt.

It will not be denied that, if it be within the competence of the legislature, in the exercise of its powers under the Constitution, to establish such a rule of evidence as is involved in the prima facie presumption under consideration, a trial court may, if by so doing it does not enter upon the domain of fact, instruct the jury as a matter of law, that such presumption will arise upon the proof of a certain fact or group of facts in any criminal case to which it is applicable. And we know of no constitutional restriction upon the legislature to create or establish any rule of evidence whose effect, when applied, is not to deny to any person accused of crime, a trial by due process of law.

(7) Indeed, it is in our opinion within the constitutional right of the legislature, or the people, in the exercise of the powers of initiative which they have reserved to themselves, to change any rule of evidence now existing and place upon a defendant in a criminal case, of whatsoever character, a heavier burden in the trial of the charge against him than he is under the existing system required to bear.

(8) But we do not understand that the presumption referred to was intended to relieve the people of the burden of proving the guilt of persons prosecuted under section 10 of the act beyond every reasonable doubt; nor do we think, when properly applied, the presumption will have that effect. It is a mere disputable presumption, the effect of which is to be overcome by such evidence only presented by the defendants, as will be sufficient to create a reasonable doubt of their guilt. Its meaning is simply this: That, after the people have shown by sufficient evidence, either direct or circum-
[fol. 61] stantial, that the persons charged have by their joint acts effected a transfer of farming or agricultural land to an alien ineligible to become a citizen of the United States, then it rests with those persons to explain the transaction consistently with good faith and honest intentions or that the combination was formed with no intention to effect the wrongful result which their acts may appear on their face to have brought about. The "burden" is neither in principal nor degree different from that imposed by the law on a person charged with the crime of murder. Section 1105 of the Penal Code provides:

"Upon a trial for murder, the commission of the homicide by the defendant being proved, the burden of proving circumstances of

mitigation, or that justify or excuse it, devolves upon him unless the proof on the part of the prosecution tends to show that the crime committed only amounts to manslaughter, or that the defendant was justifiable or excusable."

The above section, which obviously casts upon a defendant in a murder case the burden of a certain degree, after the homicide has been shown by the people to have been committed by him, has in innumerable cases been held to represent a perfectly valid exercise of legislative power. But by it there was no intention in the legislature to say that the burden of proving the defendant's guilt beyond a reasonable doubt was not still upon the people, the quantum of evidence which he was required to present to support that burden being such only as would or will raise a reasonable doubt of his [fol. 62] guilt of the crime of murder. (People v. Bushton, 80 Cal. 160-164; People v. Boling 83 Cal. 380-382; People v. Ah Gee Young, 86 Cal. 144-146; People v. Newcomer, 118 Cal. 263-271; People v. Rodriguez, 182 Cal. 197.) It should be suggested in this connection that an instruction to a jury declaring the prima facie presumption provided by section 9 of the act should always be accompanied by an instruction that the burden thus placed upon the defendants charged under section 10 of the act was only such as required the defendants to introduce evidence sufficient to create a reasonable doubt of their guilt.

It is, however, clear from its charge to the jury in the instant case, that the trial court did not regard the burden cast upon the defendants by the presumption in question as amounting to more than a demand upon them, in sustaining the burden, to introduce such evidence only as would create a reasonable doubt of their guilt of the offense charged. The court explicitly instructed the jury that the burden of proving the guilt of the defendants was upon the people, and that "every essential fact, or every essential to a conviction, must be established beyond a reasonable doubt and to a moral certainty;" that upon the plea entered by the defendants of not guilty to the indictment, the presumption of innocence arose and that said presumption "accompanies the defendants throughout the trial and goes with you in your retirement to the jury room to deliberate upon your verdict. It will avail to acquit the defendants unless it be overcome by sufficient proof of guilt. You must examine the evidence by the light of that presumption, and unless, upon examining it, you find it sufficiently strong to overcome the presumption of innocence, to remove it and moreover to satisfy you of the defendants' guilt, beyond all reasonable doubt and to a moral [fol. 63] certainty, they would be entitled to an acquittal at your hands." Again, in another part of the charge, the court further instructed the jury that "the law presumes every man to be innocent until his guilt is established beyond a reasonable doubt and this presumption attaches at every stage of the case and to every fact essential to a conviction." These instructions certainly were sufficient to convey to the mind of any intelligent man or woman that the prima facie presumption arising upon a proof of certain facts in connection with

the transaction culminating in the execution of the alleged conspiracy does not have the effect of attaching to the defendants any further burden than that of creating by the introduction of testimony in rebuttal of the presumption a reasonable doubt of their guilt.

The court's action in giving and refusing to give other instructions is criticized. It is not necessary to give these assignments special attention herein, for the reason that the court's charge covered every important principle pertinent to the case. Every principle embraced in the instructions proposed by the defendants but rejected by the court was covered by the court's charge. The criticism of certain other given instructions than the one embracing a statement of certain provisions of the Alien Land Law and above considered, we find, upon a careful examination thereof, is without merit.

3. The court allowed the district attorney to introduce before the trial jury certain alleged statements made by the defendant Cockrill before the grand jury relating to the transaction herein involved. This testimony was limited in its effect to the Defendant Cockrill. Counsel for the defendants stated that they had no objection to offer to the introduction of any portions of the statement made by Cockrill [fol. 64] before the grand jury which involved the facts of said transaction. It transpired, however, that the alleged "statement" consisted entirely of a discussion between the District Attorney, his assistant, Cockrill and some of the grand jurors as to the meaning of the several provisions of the Alien Land Law. To these matters counsel for the defendants vigorously objected. But the court, while stating that they involved mere matters of argument as to the meaning of the law, permitted them to go into the record and before the jury, saying that they were only argumentative and so were innocuous in their effect upon the rights of the defendants and were so intermingled with certain facts testified to by Cockrill before the grand jury which the people were entitled to introduce before the trial jury that they could not be segregated from the facts without much waste of time and great inconvenience.

(9) We have given this assignment serious consideration and thus have not been able to persuade ourselves that the introduction of those matters before the jury exercised any baleful effect upon the rights of the accused. Of course, those matters should not have been permitted to be introduced into the case and should have been stricken from the record, but the opinions expressed by Cockrill, the district attorney, his assistant and some of the jurors as to the meaning of the provisions of the Alien Land Law corresponded in a measure with the statement of the law by the court in its charge to the jury. Besides, the record shows that counsel on both sides, in their arguments before the jury, read and gave their respective interpretations of the provisions of said law, applicable to the case. There was no expression by either the district attorney, his assistant or any of the grand jurors contained in the alleged statement of [fol. 65] Cockrill before the grand jury upon the question of the guilt or innocence of the defendants. Moreover, Cockrill, when

asked by the district attorney or his assistant or any grand juror a question calling for his opinion as to the meaning of certain provisions of the law, invariably answered and gave his conception of the meaning of said provisions. While these are our views with respect to the admission of the matters referred to in evidence, we are not prepared to deny that there is some force in a suggestion made by the court, when ruling upon the question of the admissibility of Cockrill's testimony before the grand jury, that the discussion of the provisions of the Alien Land Law by the parties named before the grand jury and thus securing the opinion of Cockrill regarding certain provisions thereof might have been construed to disclose his real state of mind with regard to the transaction,—that is to say, it may well be regarded as tending to reveal in a measure his real intentions relative to that matter. In that view, the discussion between Cockrill and others before the grand jury as to the meaning of certain provisions of the law would be admissible in evidence at the trial as against him.

(10) It is lastly contended that the evidence is wholly insufficient to support the verdict, particularly as to the defendant Cockrill. We have above given herein the substance of the evidence introduced by the people and directly addressed to the proof of the charge. Laying aside, for the moment, the instruction containing the provision of the act as to the prima facie presumption arising upon the proof of certain facts or the doing of certain acts, it is clear to our minds that the evidence directly presented by the people was such [fol. 66] that it would be an unwarranted interference with the province of the jury for a reviewing court to declare that the conclusion arrived at by the jury was not fortified by sufficient proof. In addition to the admitted facts (above referred to) that Akada furnished the money which was paid on the purchase price and that Cockrill took the contract of sale in his name, is the testimony of the Souzas that, prior to the time at which Cockrill appeared in the transaction, Akada undertook to negotiate the purchase of the property for himself. Explicitly did B. C. Souza so testify, and further testified that he (Souza) told Akada at that time that he could not sell the land to an alien Japanese, and advised Akada to consult an attorney. It further appears from the testimony of said Souza (and this is not contradicted) that immediately upon the execution of the contract of sale, and the payments required thereby being made, Akada himself took possession of the property, although the contract was still in Cockrill's name. And here we may pause to suggest that the jury were well justified in viewing (and we may assume in support of the verdict that they did so view it) the fact of the taking possession of the land by Akada immediately upon the execution of the contract of sale as reflecting the purpose or intent of the defendants while prosecuting the negotiations for the purchase of the land; that the real intention of the defendants was to purchase the land for Akada and to take it in Cockrill's name is a mere camouflage of such intent. It also appears that no steps had been taken by Cockrill or Akada after the execution of the agreement and Akada took possession of the property to secure the ap-

[fol. 67] pointment of a guardian for the latter's children. As stated above, Akada, in a conversation with certain parties, after the contract was executed, but prior to the execution of the conveyance of the land according to the terms of the agreement, declared that the money with which certain payments were made on the purchase price belonged to his children, the eldest of whom was about seven years of age, but could not, or at least did not, make a satisfactory explanation as to where or how they kept the money. He also stated that he was going to live on the land with the boy and "run it." Then there was the testimony of the Souzas that, prior to the execution of the agreement of sale, Cockrill said to them that he had consulted the district attorney of Sonoma county about that particular case, and that that official told him (Cockrill) that it was a valid transaction, and, as seen, the denial of the district attorney that he ever gave any such advice to Cockrill or that the latter ever consulted him about said transaction.

Thus it is clear that there was sufficient evidence introduced by the People, if credited or believed by the jury, as the verdict shows that it was, to warrant a verdict of guilty as to both defendants. It is true that Cockrill's testimony tended to contradict the bad faith or any wrongful motive at the bottom of the transaction which is to be implied from the testimony presented by the People. It is also true that Cockrill explained, as to the statement of the Souzas that he said to them that he had consulted the district attorney about this particular case, that, when speaking to the Souzas of his interview with said official, he had reference, and so explained to the Souzas, to [fol. 68] another and entirely different case. But it is obviously with the jury to accept the stories of the Souzas on all the matters as to which they testified and reject the testimony of Cockrill as to any matters to which he testified. This they evidently did.

But, as we have seen, a prima facie presumption of guilt arose upon the uncontradicted fact that Akada, being an alien, ineligible to become a citizen of the United States, furnished the money with which payments upon the purchase price of the land were made. If there had been no other testimony introduced after the proof or the admission of this fact—if, in other words, the defense had introduced no proof whatever or made no attempt to make a showing in rebuttal of the presumption referred to—it would have been the duty of the jury under the law to return a verdict of guilty. As we have shown however, there is plenty of testimony in the record which strengthens and supports the presumption.

We have now given painstaking consideration to the points advanced against the validity of the judgment and the order appealed from and, as must be apparent from the foregoing discussion, have found no just legal reason for disturbing either.

The judgment and the order are, accordingly, affirmed.

Hart, J.

We concur: Burnett, J. Finch, P. J.

[fol. 69] IN THE DISTRICT COURT OF APPEAL OF CALIFORNIA

CLERK'S CERTIFICATE

STATE OF CALIFORNIA,
Third Appellate District, ss:

DISTRICT COURT OF APPEAL

I, John T. Stafford, Clerk of said Court, do hereby certify that the foregoing is a full, true and complete transcript of the record of the proceedings in the case of the People of the State of California, Plaintiff, vs. W. A. Cockrill and S. Ikada, defendants, and also of the opinion of the Court rendered therein, as the same now appear on file in my office, save and except that portion of the record which was omitted pursuant to stipulation of counsel for the respective parties.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, in my office, in Sacramento, California, this 13th day of September, 1923.

John T. Stafford, Clerk of the District Court of Appeal of the State of California, Third Appellate District. (Seal of the District Court of Appeal, State of California, Third Appellate District.)

[fol. 70-73] BOND ON WRIT OF ERROR FOR $1,500.00—Approved and Filed August 29, 1923; omitted in printing

[Title omitted]

[fol. 74] IN THE DISTRICT COURT OF APPEALS OF CALIFORNIA

[Title omitted]

SUPERSEDEAS BOND ON WRIT OF ERROR FOR $1,500.00—Approved and Filed August 29, 1923

[fol. 77] DISTRICT COURT OF APPEAL OF CALIFORNIA

CERTIFICATE OF LODGMENT

I, John T. Stafford, Clerk of the said Court, do hereby certify, that there were lodged with me as such clerk on August 29, 1923, in the matter of People of the State of California, Plaintiff, vs. W. A. Cockrill and S. Ikada, defendants:

1. The original bonds, of which copy is herein set forth.

2. Two copies of the writ of error as herein set forth, one for the plaintiff, and one to file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at my office in Sacramento, California, this 13th day of September, 1923.

John T. Stafford, Clerk of the District Court of Appeal of the State of California, Third Appellate Division. (Seal of the District Court of Appeal, State of California, Third Appellate District.)

[fol. 78] District Court of Appeal of California

[Title omitted]

Petition for Writ of Error—Filed Aug. 29, 1923

Considering themselves ag-rieved by the final decision of the District Court of Appeal of the State of California, in and for the Third Appellate District, in affirming the judgment of the lower court against the defendants in the above-entitled cause, the defendants and each of them hereby pray a Writ of Error from the said decision and judgment to the United States Supreme Court, and pray for an order fixing the amount of a supersedeas bond. Assignment of error herewith.

Algernon Crofton, Charles A. Wetmore, Jr., Frank A. Duryea, Attorneys for Defendants and Appellants.

[fol. 79] District Court of Appeal of California

[Title omitted]

Assignment of Errors—Filed Aug. 29, 1923

Come now the above defendants and each of them, and file herewith their petition for a Writ of Error, and say that there are errors in the records and proceedings in the above-entitled cause, and for the purpose of having the same reviewed in the United States Supreme Court, make the following Assignment of Error:

The District Court of Appeal of the State of California, in and for the Third Appellate District, erred in holding and deciding that Section 9 of the Alien Land Law of California was valid. The validity of the said section was denied and drawn in question by the defendants on the ground of its being repugnant to the constitution of the United States, and in contravention thereof, and also on the ground of its being repugnant to Article I of the Japanese-American Treaty of 1911, and in contravention thereof.

The said errors are more particularly set forth as follows:

The trial court gave the following instructions to the jury:

Section 1 of the Alien Land Law of this State provides that all aliens eligible to citizenship under the laws of the United States may [fol. 80] acquire, possess, enjoy, transmit and inherit real property or any interest therein, in this state, in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this state.

Section 2 of the Alien Land Law of this state provides that all aliens other than those mentioned in section one of the Alien Land Law (which has just been read to you) may acquire, possess, enjoy and transfer real property, or any interest therein in this state, in the manner and to the extent and for the purpose prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise.

Section 9 of the Alien Land Law of this state provides that every transfer of real property, or of any interest therein, though colorable in form, shall be void as to the state, and the interest thereby conveyed or sought to be conveyed shall escheat to the state, if the property interest involved is of such a character that an alien mentioned in section two hereof is inhibited from acquiring, possessing, enjoying or transferring it, and if the conveyance is made with intent to prevent, evade or avoid escheat.

A prima facie presumption that the conveyance is made with intent to prevent, evade or avoid escheat, shall arise, if the property is taken in the name of a person other than the persons mentioned in section two of said Alien Land Law, if the consideration is paid or agreed or understood to be paid by an alien mentioned in section two of said Alien Land Law.

Section 10 of said Alien Land Law provides that if two or more persons conspire to effect a a transfer of real property or of an [fol. 81] interest therein, in violation of said Alien Land Law, they are punishable by a fine, or by imprisonment, or by both.

The Alien Land Law providing that a prima facie presumption arises, that a conveyance of real property, or an interest therein, is made with intent to prevent, evade or avoid escheat of such real property to the state, if conveyed or transferred to a person entitled to acquire, possess, enjoy and transfer real property, or an interest therein, if the consideration is paid or agreed or understood to be paid by an alien not entitled to acquire, possess, enjoy and transfer real property, or an interest therein; I charge you that if you find from the evidence that a conveyance or agreement to convey real property or an interest therein, was made to a person entitled to acquire, possess, enjoy and transfer agricultural real estate, or an interest therein and you further find from the evidence that the consideration was paid, or agreed or understood to be paid by an alien not entitled under the law to acquire, possess, enjoy and transfer agricultural real estate, or an interest therein, that the

burden of proving that such conveyance or agreement to convey such agricultural real estate or an interest therein was not made with intent to prevent, evade or avoid an escheat of said land to the state, is upon those persons claiming that it was not made with such intent.

The defendants respectfully submit that the instruction as to the burden of proof was erroneous.

First, because the presumption created by Section 9 of the Alien Land Law of California, and given as an instruction, is invalid and abridges the privileges and immunities of citizens and of these defendants created by Section I, Article XIV of the Constitution of the United States, and

Second, because the presumption created by Section 9 of the Alien [fol. 82] Land Law of California abridges the rights and privileges of the defendant S. Ikada guaranteed to him by Article I of the Japanese-American Treaty of 1911.

For which errors the defendants and each of them pray that the said judgment of the District Court of Appeal of the State of California, in and for the Third Appellate District, dated April 30, 1923, be reversed and a judgment rendered in favor of the defendants.

Algernon Crofton, Charles A. Wetmore, Jr., Frank A. Duryea, Attorneys for Defendants and Appellants.

[fol. 83] DISTRICT COURT OF APPEAL OF CALIFORNIA

[Title omitted]

ORDER ALLOWING WRIT OF ERROR—Filed Aug. 29, 1923

Let the Writ of Error issue upon the execution of a bond by each of the defendants to the State of California, in the sum of fifteen hundred dollars ($1,500.00), such bond when approved to act as a supersedeas.

Dated: August 29, 1923.

Wm. M. Finch, Presiding Justice of the District Court of Appeal for the State of California in and for the Third Appellate District.

[fol. 84] UNITED STATES OF AMERICA, ss:

IN DISTRICT COURT OF APPEAL OF CALIFORNIA

WRIT OF ERROR—Filed Aug. 29, 1923

The President of the United States of America to the Honorable the Justices of the District Court of Appeal of the State of California in and for the Third Appellate District, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court of Appeal before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the People of the State of California, plaintiff, and W. A. Cockrill and S. Ikada, defendants, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said state on the ground of its being repugnant to the Constitution, treaties or law of the United States, and the decision was in favor of their validity, a manifest error hath happened, to the great damage of the said defendants, W. A. Cockrill and S. Ikada, and to each of them, as by the record and their petition and assignment of error appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so [fol. 85] that you have the same in the said Supreme Court at Washington within sixty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the 29th day of August, in the year of our Lord One Thousand, Nine Hundred and Twenty-three.

Walter B. Maling, Clerk U. S. District Court, Northern District of California, by F. M. Lampert, deputy clerk.

Allowed August 29, 1923. Wm. M. Finch, Presiding Justice of the District Court of Appeal of the State of California in and for the Third Appellate District.

[fols. 86 & 87] CITATION—In usual form, showing service on U. S. Webb; filed Aug. 29, 1923; omitted in printing

[fol. 88] IN THE DISTRICT COURT OF APPEAL OF CALIFORNIA

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD

It is hereby stipulated by the respective counsel for the above-named parties that the foregoing transcript, consisting of thirty-six (36) pages, together with the appendix thereto shall constitute the record on writ of error heretofore issued out of the Supreme Court of the United States to the District Court of Appeal of the State of California in and for the Third Appellate District.

And the Clerk of said District Court of Appeal of the State of California, Third Appellate District, is hereby requested by the undersigned to forthwith transmit the said transcript and record, duly certified under his seal and the seal of the said District Court of Appeal, to the Clerk of the Supreme Court of the United States, at the City of Washington, District of Columbia.

Dated September 20th, 1923.

U. S. Webb, Attorney General for the State of California, by J. Charles Jones, Deputy Attorney General, Attorneys for Plaintiff. Algernon Crofton, Chas. A. Wetmore, Jr., Attorneys for Defendants.

Endorsed on cover: File No. 29,890. California District Court of Appeal, Third Appellate District. Term No. 182. W. A. Cockrill and S. Ikada, plaintiffs in error, vs. People of the State of California. Filed September 27, 1923. File No. 29,890.

No. 182

In the Supreme Court of the United States

October Term, 1924

W. A. COCKRILL and S. IKADA,
Plaintiffs in Error,
v.
PEOPLE OF THE STATE OF CALIFORNIA.

In Error to the District Court of Appeal for the Third Appellate District of the State of California.

Brief of Plaintiffs in Error

ALGERNON CROFTON,
CHARLES A. WETMORE, JR.,
57 Post St., San Francisco,
Attorneys for Plaintiffs in Error.

In the Supreme Court of the United States

October Term, 1924

W. A. COCKRILL and S. IKADA,
Plaintiffs in Error,
v.
PEOPLE OF THE STATE OF CALIFORNIA.

BRIEF OF PLAINTIFFS IN ERROR

STATEMENT OF THE CASE

In error to the District Court of Appeal of the State of California, in and for the Third Appellate District, to review a judgment dated April 30, 1923, affirming a judgment of the Superior Court in and for Sonoma County.

By this judgment W. A. Cockrill and S. Ikada, defendants below, following their conviction of conspiracy to violate the Alien Land Law of California, were each sentenced to pay a fine of $750 or be imprisoned for 375 days.

The case arose out of these facts: The Alien Land Law of California forbids the holding of agricultural land by an alien who is ineligible to citizenship. Into this classification Japanese subjects admittedly fall. (Incidentally, the right of any state to pass such a law is not questioned in this case.)

On August 26, 1921, B. C. Souza and Mae C. Souza, his wife, made a contract with the defendant, W. A. Cockrill, a practicing attorney of Santa Rosa, by which they agreed to sell to him five acres of agricultural land situated in California.

The first payment, $150, was paid by the defendant, Ikada, Cockrill's client, a Japanese subject, who was the father of several American born minor children.

Both Cockrill and Ikada told the Souzas at the time, that the property was being purchased by Cockrill for the American born children of Ikada. These children being American citizens, were admittedly legally entitled to take and hold the land.

On November 14, 1921, the grand jury of Sonoma County returned an indictment against Cockrill and Ikada charging them with conspiracy to violate the Alien Land Law. The trial came on June 26, 1922.

It was the contention of the prosecution that Cockrill took the contract of sale from the Souzas for the alien Japanese father and with the intention eventually to take the deed to the property in the same way and to hold it in trust for Ikada, which would be admittedly a violation of the law.

It was the contention of the defendants that Ikada was making a gift of the land to his native born children and that Cockrill took the contract of sale from the Souzas in his own name for Ikada's children, with the intention that the deed would eventually be made to the children, which would be admittedly a legal transaction.

In other words the state contended that Cockrill was a trustee for the father, who was not entitled to hold the land, while the defense contended that Cockrill was a trustee for the children, who were.

As presumptive proof of criminal intent the prosecution, over the objection of the defense, read to the jury Section 9 of the Alien Land Law, and the court gave as a charge to the jury a resume of the sections of the Alien Land Law considered applicable to the case, as follows:

> Section 1 of the Alien Land Law of this State provides that all aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit and inherit real property or any interest therein in this State in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this State.
>
> Section 2 of the Alien Land Law of this State provides that all aliens other than those mentioned in section one of the Alien Land law, which has just been read to you, may acquire, possess, enjoy and transfer real property, or any interest therein, in this State in the manner and to the extent and for the purpose prescribed by any treaty now existing between the government of the United States and the nation or country

of which such alien is a citizen or subject, and not otherwise.

Section 9 of the Alien Land Law of this State provides that every transfer of real property, or of any interest therein, though colorable in form, shall be void as to the State, and the interest thereby conveyed or sought to be conveyed shall escheat to the State, if the property interest involved is of such a character that an alien mentioned in section two thereof is inhibited from acquiring, possessing, enjoying or transferring it, and if the conveyances made with intent to prevent, evade or avoid escheat.

A *prima facie* presumption that the conveyance is made with intent to prevent, evade or avoid escheat shall arise, if the property is taken in the name of a person other than the persons mentioned in section two of said Alien Land Law, if the consideration is paid or agreed or understood to be paid by an alien mentioned in section two of said Alien Land Law.

Section 10 of said Alien Land Law provides that if two or more persons conspire to effect a transfer of real property or of an interest therein in violation of said Alien Land Law, they are punishable by a fine or by imprisonment, or by both. (Record, pp. 6 and 7.)

The court then further charged the jury that "the burden of proving that such conveyance or agreement to convey such agricultural real estate or an interest therein was not made with intent to prevent, evade or avoid an escheat of said land to the State, is upon those persons claiming that it was not made with such intent." (Record, p. 8.)

Thus, the jury were charged that because the defendant, Ikada, was a Japanese, the fact that he

made the first payment of $150 on the property, passed the burden of proof to the defense to prove that the agreement was not made to evade escheat.

The validity of the law under which this charge was made is the point contested.

The jury returned a verdict of guilty. Motions for an order in arrest of judgment and for a new trial were in due course denied and sentence of fine with an alternative of imprisonment was pronounced on June 30, 1922.

The defendants appealed to the District Court of Appeal of the State of California, alleging as error that the rule of evidence or presumption raised by Section 9 of the Alien Land Law, and given as a charge to the jury, violated the Fourteenth Amendment of the federal constitution and also contravened the Japanese-American Treaty of 1911. The appellate court held that the presumption was neither unconstitutional nor in violation of a treaty and affirmed the sentence on April 30, 1923. Defendants' petition for a hearing in the Supreme Court of California was denied on June 28, 1923.

No question of the right of any state to forbid aliens acquiring land within its borders was raised in the case at bar.

But defendants did assert that Section 9 of the California Alien Land Law created a rule of evidence which was applicable only to certain aliens and not to others, and not at all to citizens. This inequality of application they hold was both unconstitutional and in violation of a treaty.

Thus the sole question here involved is whether the presumption or rule of evidence created by Section 9 denies to Japanese, rights guaranteed them by the federal constitution or by the Japanese-American treaty or both.

If the presumption denies to Japanese residing in California the equal protection of the laws, it violates the federal constitution and should not have been given as an instruction to the jury.

Similarly if the presumption denies to Japanese residing here, the same rights in respect to their property as are granted to native citizens, it contravenes the treaty between Japan and the United States and so should not have been given as an instruction.

SPECIFICATION OF ERRORS

I.

The court erred in reading to the jury as an instruction Section 9 of the Alien Land Law of California as follows (Record, p. 7):

> Section 9 of the Alien Land Law of this state provides that every transfer of real property, or of any interest therein, though colorable in form, shall be void as to the state, and the interest thereby conveyed or sought to be conveyed, shall escheat to the state, if the property interest involved is of such a character that an alien mentioned in section two hereof is inhibited from acquiring, possessing, enjoying or transfering it, and if the conveyance is made with intent to prevent, evade or avoid escheat.

A *prima facie* presumption that the conveyance is made with intent to prevent, evade or avoid escheat, shall arise if the property is taken in the name of a person other than the persons mentioned in section two of said Alien Land Law, if the consideration is paid or agreed or understood to be paid by an alien mentioned in section two of said Alien Land Law.

II.

The court erred in instructing the jury that the burden of proof was upon defendants, as follows (Record, p. 8):

The Alien Land Law providing that a *prima facie* presumption arises, that a conveyance of real property, or an interest therein, is made with intent to prevent, evade or avoid escheat of such real property to the State, if conveyed or transferred to a person entitled to acquire, possess, enjoy and transfer real property, or an interest therein, if the consideration is paid or agreed or understood to be paid by an alien not entitled to acquire, possess, enjoy and transfer real property, or an interest therein; I charge you that if you find from the evidence that a conveyance or agreement to convey real property or an interest therein, was made to a person entitled to acquire, possess, enjoy and transfer agricultural real estate, or an interest therein, and you further find from the evidence that the consideration was paid, or agreed or understood to be paid by an alien not entitled under the law to acquire, possess, enjoy and transfer agricultural real estate, or an interest therein, that the burden of proving that such conveyance or agreement to convey such agricultural real estate or an interest therein was not made with intent to prevent, evade or avoid an escheat of said land to the state, is upon those persons claiming that it was not made with such intent.

ARGUMENT

I.

The presumption or rule of evidence which the District Court of Appeal of California holds is applicable equally to all persons, does not apply equally to all donors, although it does apply equally to all donees.

The plaintiffs in error submit first that the portion of the Alien Land Law which in Section 9 attempts to create a *prima facie* presumption, is unconstitutional.

The presumption or rule of evidence in question is raised by Section 9 of the law, which section, so far as it is material here, provides as follows:

> Every transfer of real property, or of an interest therein, though colorable in form, shall be void as to the state and the interest thereby conveyed or sought to be conveyed shall escheat to the state if the property interest involved is of such a character that an alien mentioned in Section two hereof is inhibited from acquiring, possessing, enjoying or transferring it, and if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein. A *prima facie* presumption that the conveyance is made with such intent shall arise upon proof of any of the following groups of facts:
>
> (a) The taking of the property in the name of a person other than the persons mentioned in Section two hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in Section two hereof.

The constitutional provision violated is the right of the Japanese father to the equal protection of the laws, guaranteed by Section 1, Article XIV of the Constitution of the United States.

Specifically, the grievance in the case at bar is that this law prevents a Japanese father making a gift of land to his American born child—although the legality of such a gift is admitted—without raising the presumption that he is doing so with criminal intent to evade the law, while fathers of other races may do the same thing unhampered.

The decision of the appellate court holds that the presumption referred to in subdivision (a) of Section 9, is a rule of evidence applicable to all persons alike.

That is true only so far as donees of a gift of land made by a Japanese are concerned. But it is not true as to donors. A Japanese donor has a presumption of guilty intent raised against him, while donors of other nationalities have not.

To illustrate: It is the law of California that a Japanese father may make a gift of land to his American born child and may supply the money for the purchase price. (*In re* Yano, 188 Cal. 645, 650.)

The same right is possessed by a father of any other nationality, native or alien.

It goes without saying that either father has also the sequent right to purchase the property and place it in the hands of a trustee for the child.

Now if both fathers buy a piece of land for their respective children, the children of the Japanese

father will hold the land subject to the right of the state to bring an action for escheat and in such an action the child would have to disprove the presumption. It is true that the other child would have no presumption to disprove, but as the presumption would be raised equally against all persons receiving such a gift from a Japanese, the presumption does not conflict with the Fourteenth Amendment when viewed from this angle, that is so far as the donee's right is concerned.

The plaintiffs in error never contended that it did.

But there are two ends to a gift, donee and donor. To the donees the presumption applies equally. To donors it decidedly does not.

This point, the plaintiffs in error believe, was overlooked by the courts below, and it is the point on which the presumption's unconstitutionality is urged.

The two fathers have, under California law, equal rights to make a gift to their American born children, with or without the interposition of a trustee.

When the Japanese father exercises his legal right he is faced, as in the instant case, with a presumption which will result in the escheat of his gift, unless he can prove the contrary.

The other father can make his gift free of encumbrance. Yet the legality of both gifts is the same.

It cannot be gainsaid that the legal right to make a gift, assured the Japanese father by the constitution and the law, is hamstrung by this presumption, and it cannot be gainsaid that this burden is laid only on aliens ineligible to citizenship and not on any other persons.

It needs no argument, to use the phrasing of the Supreme Court in the Estate of Yano, *supra,* to demonstrate the proposition that a law which gives to one person a right and withholds it from another, both being alike competent in all respects, is not equal as between the two persons. The person from whom it is withheld is not accorded the equal protection of the law.

What we urge here is that when a Japanese exercises his legal right to convey land to a trustee for his American born child, he cannot legally be burdened with a presumption which favors the nullification of his gift, unless the same presumption is raised against the gifts of all other donors. Nor can any theory of classification be invoked to aid the presumption's validity, as fully appears from the opinion *In re* Yano, *supra,* 655.

II.

So far as Section 9 of the Alien Land Law of California attempts to create a presumption of guilty intent against a Japanese performing a legal act, it is violative of the Japanese-American Treaty of 1911.

Secondly, the plaintiffs in error submit that the presumption of Section 9 lays a burden of proof upon a Japanese subject exercising his legal right to make a gift, which no citizen or eligible alien has to shoulder, and thus violates the Japanese-American treaty of 1911.

The treaty provision violated is the right of the

Japanese father to enjoy the same rights and privileges as native citizens in respect to his person and property, guaranteed by Article I of the Japanese-American treaty of 1911.

Article I of the treaty reads, in part, as follows:

> The citizens or subjects of each of the High Contracting Parties shall receive, in the territories of the other, the most constant protection and security for their persons and property, and shall enjoy in this respect the same rights and privileges as are or may be granted to native citizens or subjects, on their submitting themselves to the conditions imposed upon the native citizens or subjects.

The argument that Section 9 contravenes the treaty differs from the argument that it infringes the constitution, in the main only so far as the phrase "the same rights and privileges" differs from the phrase "equal protection of the laws."

It would seem that the power to make a gift to one's child is both a right and a privilege, as it should be. Certainly counsel despairs of finding authority to support such an axiomatic truth.

If this be true, and if also the power is a right and privilege possessed by native born Americans, then Section 9 prevents a Japanese making a gift to his children, direct or through a trustee, free of burden, although all others may do so, and so violates his treaty right.

For while other citizens and other aliens may trustee property for their children or give it direct, it is

impossible for a Japanese to do it without raising the ogre of escheat and undertaking to disprove a *prima facie* presumption to a jury where unfortunately prejudice and passion are sometimes factors.

It is clear that a law which subjects a Japanese to a rule of evidence not applicable to citizens generally, does not accord to him "the same rights and privileges as are granted to native citizens".

We repeat here, as in the constitutional argument, that in the instant case no question is involved of the right of the state to forbid the acquisition of agricultural land by Japanese. The treaty gives such aliens no such privilege. But the right of a Japanese to make a gift to his child, an American citizen, who as such is entitled to take and hold it, has been strongly upheld by the Supreme Court of California, and this right, of course, cannot be burdened with a presumption not laid on other nationalities or citizens.

Wherefore we respectfully submit that the judgment and order appealed from should be reversed.

ALGERNON CROFTON,
CHARLES A. WETMORE, JR.,
Attorneys for Plaintiffs in Error.

No. 132

October Term, 1925

IN THE

SUPREME COURT OF THE UNITED STATES

W. A. OLDFIELD and S. ISADA,
Plaintiffs in Error,
vs.
THE PEOPLE OF THE STATE OF CALIFORNIA,
Defendant in Error.

IN ERROR TO THE DISTRICT COURT OF APPEAL, THIRD APPELLATE DISTRICT, STATE OF CALIFORNIA.

BRIEF OF DEFENDANT IN ERROR

U. S. Webb,
Attorney General of the State of California,

[illegible],
Deputy Attorney General,

[illegible],
Deputy Attorney General.

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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1924.

No. 182.

W. A. COCKRILL and S. IKADA,
Plaintiffs in Error,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

(Attached hereto, as an appendix, is a copy of the California Alien Land Act of 1920.)

STATEMENT OF THE CASE.

Plaintiffs in error were charged in an amended indictment with the crime of conspiring to effect a transfer of real property in violation of the Alien Land Law of California. They were tried, convicted and sentenced to pay a fine of $750 or be imprisoned for 375 days. On appeal to the District Court of Appeal of the State of California the judgment was affirmed.

People vs. *Cockrill,* 216 Pac. 78.

(Transcript of Record, pp. 17 to 33.)

Thereafter, application for hearing by the State Supreme Court was denied.

From the record it appears that B. C. Souza and his wife were the owners of thirty acres of agricultural land situate in Sonoma County, California. Plaintiff in error Ikada, who it is conceded is a native and a subject of the Empire of Japan, and an alien ineligible to citizenship in the United States, approached the Souzas and offered to purchase said property for himself. (Trans. p. 32.) Souza told Ikada that he could not sell the land to an alien Japanese, and advised him to consult an attorney. Ikada thereupon consulted plaintiff in error Cockrill, a lawyer by profession, who negotiated an arrangement whereby the land was to be sold by the Souzas to Cockrill, for the sum of $2,250, and upon the execution of the agreement Cockrill paid the vendors the sum of $150. Plaintiffs in error represented that the land was to be purchased for and to be owned by the American-born children of Ikada. Ikada furnished the money with which the payments on the land were made. (Trans. p. 18.) Immediately upon execution of the contract of sale Ikada himself took possession of the property although the contract was still in Cockrill's name.

The Alien Land Law of California prohibits the transfer of agricultural property to aliens ineligible to citizenship, and section 9 provides that any conveyance, though colorable in form, made with intent

to evade its provisions, shall be void as to the state. This section further provides:

> "A prima facie presumption that the conveyance is made with such intent shall arise upon proof of any of the following groups of facts:
>
> (a) The taking of the property in the name of a person other than the persons mentioned in section two hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in section two hereof. * * *"

Section two refers to aliens ineligible to citizenship. It is this quoted section of the law, given as an instruction to the jury in the trial of this case, which is attacked in this proceeding by plaintiffs in error upon the two-fold ground that:

(1) It violates the fourteenth amendment of the federal constitution in that it is not made to apply equally to all donors of real property, and

(2) It violates the United States-Japan Treaty of 1911 in that it discriminates against subjects of Japan.

ARGUMENT.

I.

The Presumption Contained in Section 9 of the Alien Land Law of California is not Violative of the Fourteenth Amendment.

The California Alien Land Act was upheld by this court in

Porterfield vs. *Webb*, 44 Sup. Ct. Rep. 21; 263 U. S. 225;

O'Brien vs. *Webb,* 44 Sup. Ct. Rep. 112; 263 U. S. 313;
Frick vs. *Webb,* 44 Sup. Ct. Rep. 115; 263 U. S. 326.

The Washington Alien Land Act was upheld by this court in

Terrace vs. *Thompson,* 44 Sup. Ct. Rep. 15; 263 U. S. 197.

The California Alien Land Act was also upheld by the Supreme Court of California in

Ex parte Akado, 188 Cal. 739;
In the Matter of Okahara, 216 Pac. 614.

The California Alien Land Act groups aliens into two classes—one, aliens eligible to citizenship under the laws of the United States and, the other, aliens not so eligible, and in the cases decided by this court just cited this classification is approved.

It is proper for a court, in construing a statute, to place itself in the position of the legislature and from contemporaneous facts determine the cause and necessity for the law and the evils sought to be remedied, and to so interpret it as to suppress the mischief and advance the remedy.

Newgirg vs. *Black,* 174 Ia. 636; 156 N. W. 708;
Board of Commissioners vs. *Given,* 82 N. E. 918; 169 Ind. 468;
Washington Term. Co. vs. *Dist. of Columbia,* 36 App. D. C. 186.

The citizens of the State of California have, in successive enactments and amendments, evinced a

purpose to exercise their constitutional right to maintain their soil free from the dominion of ineligible aliens. Those who were thus barred have exercised great resourcefulness in devising ways and means of evading the purposes of the law. One of the most natural and obvious devices for the accomplishing of this purpose is that wherein an ineligible alien with native born minor children purchases land with his own funds, taking title in the name of an eligible person, ostensibly as trustee for his said minors, with the intent, however, of possessing, controlling and using the land for his own benefit. It was to prevent such an evasion that section 9 was written into the law declaring that where an ineligible alien pays the purchase price of the land it would be a *prima facie* presumption that such transaction was made with intent to evade the law. It will be noted that the law does not make this a conclusive, but rather a disputable presumption, and it may be rebutted by any credible evidence.

The establishment of presumptions and of rules respecting the burden of proof is clearly within the domain of governments, state or national, and a provision, not unreasonable, *per se*, and not conclusive of a person's rights, does not constitute a denial of due process or of the equal protection of the laws, secured by the fourteenth amendment to the United States constitution.

Hawkins vs. *Bleakly*, 243 U. S. 210;
Jones vs. *Brim*, 165 U. S. 180;

Blinn vs. *Nelson*, 222 U. S. 1;
Scott vs. *McNeal*, 154 U. S. 38;
Orient Ins. Co. vs. *Daggs*, 172 U. S. 564;
Hawes vs. *Georgia*, 258 U. S. 1.

In *Hawkins* vs. *Bleakly, supra*, this court held that the Iowa workmen's compensation act did not deprive the employer of equal protection of the laws, although it provided that in an action against an employer who had rejected the act it would be presumed that the injury was the direct result of his negligence, and that he must assume the burden of proof to rebut this presumption.

This court has announced the rule on the right of states to create presumptions, based upon local experience in

Mobile, J. & K. C. R. R. vs. *Turnipseed*, 219 U. S. 35 at p. 42,

as follows:

"The law of evidence is full of presumptions either of fact or law. The former are, of course, disputable, and the strength of any inference of one fact from proof of another depends upon the generality of the experience upon which it is founded. For a discussion of some common law aspects of the subject see *Cincinnati &c. Ry.* vs. *South Fork Coal Co.*, 139 Fed. Rep. 528 *et seq.*

Legislation providing that proof of one fact shall constitute *prima facie* evidence of the main fact in issue is but to enact a rule of evidence, and quite within the general power of government. Statutes, national and state, dealing with such

methods of proof in both civil and criminal cases, abound, and the decisions upholding them are numerous. A few of the leading ones are *Adams* vs. *New York*, 192 U. S. 585; *People* vs. *Cannon*, 139 N. Y. 32; *Horne* vs. *Memphis &c. Ry.* 1 Coldwell (Tenn.) 72; *Meadowcroft* vs. *The People*, 163 Illinois 56; *Commonwealth* vs. *Williams*, 6 Gray 1; *State* vs. *Thomas*, 144 Alabama 77."

It is but a natural and a reasonable inference that one who pays the purchase price of property does so to secure to himself an interest in the property for which he is paying. There are instances of *bona fide* gifts, but it is not irrational to assume that in the great majority of cases of this kind the motive is self-interest, and the intent is to circumvent the provisions of this law. The legislature, therefore, declared that to be a presumption which after all was a rational inference, in the absence of other explanation. It did no more than to declare, as in the much more serious crime of murder, that after the homicide has been shown to have been committed by the defendant, the burden of proving circumstances of mitigation, justification or excuse devolves upon the defendant. (See section 1105, California Penal Code; *People* vs. *Bushton*, 80 Cal. 160.) Or, as declared in section 33, Title II of the National Prohibition Act, that possession of liquors after February 1, 1920, by any person not legally permitted shall be *prima facie* evidence that such liquor is being kept for the purpose of sale. Or that recent possession of fruits of a burglary or larceny is a

circumstance indicative of guilt, in the absence of explanation.

Plaintiffs' specific objection is that section 9 illegally discriminates against Japanese *donors*. It needs no argument to demonstrate, and as we have already shown, the statute does not single out Japanese, but refers to aliens of all nations, countries or races who are ineligible to citizenship. Plaintiffs concede that there is no discrimination as to donees but only as to donors. Who is a donor? In simple language, he is one who gives (generally without a consideration). This statute does not prevent an ineligible alien from making any and all gifts that he desires. It does prevent him from making a pseudo-donation; that is to say, one that is in form or color a gift, but where the intention is not to make a *bona fide* gift, but to cloak the secret interest intended to be retained by the purported donor. The latter is not a real or genuine donor. In so far as the statute applies to such persons, it can not correctly be said to affect or discriminate between donors at all.

It does, however, recognizing from experience the ease with which its provisions may be evaded and thereby rendered ineffectual, in cases where an ineligible alien advances the purchase price of lands to be taken in the name of another person, place the burden upon either or both of showing that the transaction is genuine. To repeat, it does not prevent the making of a gift, but it does require, under

the circumstances stated, that the gift be a real one. This is but a rule of evidence. Herein lies the distinction between this case and that of *Estate of Yano,* 188 Cal. 645, cited by counsel for plaintiffs in error. This last case upheld the right of an ineligible alien to be appointed a guardian of his child's estate. It decided that a law absolutely prohibiting the appointment of an ineligible alien as guardian of his citizen child was a violation of the guarantee of the fourteenth amendment that no state shall deny to any person the equal protection of its laws.

It would appear that the principle so clearly laid down by this court in

Patsone vs. *Pennsylvania,* 232 U. S. 138,

is determinative of all the issues herein. The court there said at page 143:

> " * * * it hardly can be disputed that if the lawful object * * * warrants the discrimination, the means adopted for making it effective also might be adopted."

The object of the Pennsylvania statute there considered was the preservation of wild game for its own citizens. To effect that purpose the law prohibited the possession and use of shotguns and rifles by resident aliens. The purpose of the statute in the instant case is to preserve the agricultural lands of the state from the dominion of ineligible aliens, and section 9 is one of the means adopted for making the law effective. It properly tends to curb one of

the instrumentalities whereby the law could be rendered ineffectual.

II.

The California Alien Land Law Does Not Deny or Infringe Upon Any Treaty Rights of Japanese Subjects.

(See Vol. 3 of Malloy's "Treaties, Conventions, International Acts," etc., page 77, for the United States-Japan Treaty.)

This court has recently held that the Alien Land Law, in so far as it forbids the acquisition and use of agricultural lands by Japanese, does not infringe their rights under the United States-Japan Treaty.

Porterfield vs. *Webb*, 44 Sup. Ct. Rep. 21; 263 U. S. 225;

O'Brien vs. *Webb*, 44 Sup. Ct. Rep. 112; 263 U. S. 313;

Frick vs. *Webb*, 44 Sup. Ct. Rep. 115; 263 U. S. 326;

Terrace vs. *Thompson*, 44 Sup. Ct. Rep. 15; 263 U. S. 197.

Section 9 relative to the presumption in question is merely an incidental part of the law in furtherance of its main object. There is no question but that it is germane to its principal purpose. Indeed, it is apparent that the statute is not limited to Japanese, but includes all aliens ineligible to citizenship. It applies to all persons regardless of race, color or nativity. It applies to American citizens, for if a citizen and an ineligible alien were to conspire to violate the act, each would be subject to prosecution.

They would be equally affected by the aforesaid presumption and rule of evidence. This is demonstrated by the instant case, where it appears and is admitted that plaintiff in error Cockrill is a native of the United States. (Trans. p. 28, fol. 58.) The presumption thus applying alike to all persons irrespective of nativity, race or color, who participate in a violation of the act, it necessarily follows that it is in no wise discriminatory between the subjects of the United States and those of the Emperor of Japan.

The only portion of the United States-Japan Treaty invoked is Article I thereof, providing that the subjects of each of the high contracting parties "shall enjoy * * * the same rights and privileges as are or may be granted to native citizens or subjects * * *." Plaintiffs in their brief concede that the argument that section 9 contravenes the treaty differs from the argument that it infringes upon the constitution *only so far* as the phrase "the same rights and privileges" differs from the phrase "equal protection of the laws." They do not point out nor do they appear to claim that there is any essential difference between the two. The fourteenth amendment and the treaty provision were merely designed to secure to denizens of this country constitutional equality before the law. If, as this court has held, this state can deny to Japanese subjects "the same rights and privileges" that our native citizens or subjects may enjoy with respect to the ownership and use of real property, *a fortiori* it can

provide as incidental to the operation of such a law, that the presumption in section 9 shall apply.

There is no merit to the contention that section 9 *prevents* a Japanese making a gift to his American born children. It not only does not prevent the making of such a gift, but on the contrary recognizes its validity whenever it is shown that it was not so made to evade or violate the law. The mere word of the donor on this subject, if believed, would overcome the presumption. Nor can counsel strengthen his argument on this point by the assumption that the jury in a given case will be improperly influenced by "prejudice and passion." On the contrary, the court will apply the presumption that duties of jurors will be properly performed.

As said in

Estate of Yano, 188 Cal. 645,

cited by plaintiffs in error,

> "The rights and privileges which it (the treaty) declares the Japanese citizen shall enjoy here are such rights and privileges only as may be necessary for the protection and security of his own person or property."

It can not be said that it is necessary for the protection of *his* person or property, when he purchases real property for another, that the presumption in section 9 should not apply. Such a rule of evidence in no way affects his personal security, and since he can not in any manner acquire the property in ques-

tion, the rule can not affect any of his rights or privileges with regard thereto.

In conclusion, the whole case here presented may be summarized in the statement that the fundamental question herein is no different from that already decided by this court in *Porterfield* vs. *Webb*, *O'Brien* vs. *Webb*, *Frick* vs. *Webb* and *Terrace* vs. *Thompson* (*supra*), as to the validity of the classification with respect to and the inherent distinction between eligible and ineligible aliens.

It is respectfully submitted that the judgment and order appealed from should be affirmed.

U. S. Webb,
Attorney General of the
State of California,
Frank English,
Deputy Attorney General,
John H. Riordan,
Deputy Attorney General,
J. Charles Jones,
Deputy Attorney General,
Attorneys for Defendant in Error.

APPENDIX.

CALIFORNIA ALIEN LAND LAW OF 1920.

(Statutes of California, 1921, page lxxxiii.)

An act relating to the rights, powers and disabilities of aliens and of certain companies, associations and corporations with respect to property in this state, providing for escheats in certain cases, prescribing the procedure therein, requiring reports of certain property holdings to facilitate the enforcement of this act, prescribing penalties for violation of the provisions hereof, and repealing all acts or parts of acts inconsistent or in conflict herewith.

The people of the State of California do enact as follows:

Section 1. All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit and inherit real property, or any interest therein, in this state, in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this state.

Sec. 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy and transfer real property, or any interest therein, in this state, in the manner and to the extent, and for the purpose prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise.

Sec. 3. Any company, association or corporation organized under the laws of this or any other state or

nation, of which a majority of the members are aliens other than those specified in section one of this act, or in which a majority of the issued capital stock is owned by such aliens, may acquire, possess, enjoy and convey real property, or any interest therein, in this state, in the manner and to the extent and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such members or stockholders are citizens or subjects, and not otherwise. Hereafter all aliens other than those specified in section one hereof may become members of or acquire shares of stock in any company, association or corporation that is or may be authorized to acquire, possess, enjoy or convey agricultural land, in the manner and to the extent and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise.

Sec. 4. Hereafter no alien mentioned in section two hereof and no company, association or corporation mentioned in section three hereof, may be appointed guardian of that portion of the estate of a minor which consists of property which such alien or such company, association or corporation is inhibited from acquiring, possessing, enjoying or transferring by reason of the provisions of this act. The public administrator of the proper county, or any other competent person or corporation, may be appointed guardian of the estate of a minor citizen whose parents are ineligible to appointment under the provisions of this section.

On such notice to the guardian as the court may

require, the superior court may remove the guardian of such an estate whenever it appears to the satisfaction of the court:

(a) That the guardian has failed to file the report required by the provisions of section five hereof; or

(b) That the property of the ward has not been or is not being administered with due regard to the primary interest of the ward; or

(c) That facts exist which would make the guardian ineligible to appointment in the first instance; or

(d) That facts establishing any other legal ground for removal exist.

Sec. 5. (a) The term "trustee" as used in this section means any person, company, association or corporation that as guardian, trustee, attorney-in-fact or agent, or in any other capacity has the title, custody or control of property, or some interest therein, belonging to an alien mentioned in section two hereof, or to the minor child of such an alien, if the property is of such a character that such alien is inhibited from acquiring, possessing, enjoying or transferring it.

(b) Annually on or before the thirty-first day of January every such trustee must file in the office of the secretary of state of California and in the office of the county clerk of each county in which any of the property is situated, a verified written report showing:

(1) The property, real or personal, held by him for or on behalf of such alien or minor;

(2) A statement showing the date when each item of such property came into his possession or control;

(3) An itemized account of all expenditures, investments, rents, issues and profits in respect to the

administration and control of such property with particular reference to holdings of corporate stock and leases, cropping contracts and other agreements in respect to land and the handling or sale of products thereof.

(c) Any person, company, association or corporation that violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(d) The provisions of this section are cumulative and are not intended to change the jurisdiction or the rules of practice of courts of justice.

Sec. 6. Whenever it appears to the court in any probate proceeding that by reason of the provisions of this act any heir or devisee can not take real property in this state or membership or shares of stock in a company, association or corporation which, but for said provisions, said heir or devisee would take as such, the court, instead of ordering a distribution of such property to such heir or devisee, shall order a sale of said property to be made in the manner provided by law for probate sales of property and the proceeds of such sale shall be distributed to such heir or devisee in lieu of such property.

Sec. 7. Any real property hereafter acquired in fee in violation of the provisions of this act by any alien mentioned in section two of this act, or by any company, association or corporation mentioned in section three of this act, shall escheat to, and become and remain the property of the State of California. The attorney general or district attorney of the proper county shall institute proceedings to have the

escheat of such real property adjudged and enforced in the manner provided by section four hundred seventy-four of the Political Code and title eight, part three of the Code of Civil Procedure. Upon the entry of final judgment in such proceedings, the title to such real property shall pass to the State of California. The provisions of this section and of sections two and three of this act shall not apply to any real property hereafter acquired in the enforcement or in satisfaction of any lien now existing upon, or interest in such property, so long as such real property so acquired shall remain the property of the alien, company, association or corporation acquiring the same in such manner. No alien, company, association or corporation mentioned in section two or section three hereof shall hold for a longer period than two years the possession of any agricultural land acquired in the enforcement of or in satisfaction of a mortgage or other lien hereafter made or acquired in good faith to secure a debt.

Sec. 8. Any leasehold or other interest in real property less than the fee, hereafter acquired in violation of the provisions of this act by any alien mentioned in section two of this act, or by any company, association or corporation mentioned in section three of this act, shall escheat to the State of California. The attorney general or district attorney of the proper county shall institute proceedings to have such escheat adjudged and enforced as provided in section seven of this act. In such proceedings the court shall determine and adjudge the value of such leasehold or other interest in such real property, and enter judgment for the state for the amount thereof together with costs. Thereupon the

court shall order a sale of the real property covered by such leasehold, or other interest, in the manner provided by section twelve hundred seventy-one of the Code of Civil Procedure. Out of the proceeds arising from such sale, the amount of the judgment rendered for the state shall be paid into the state treasury and the balance shall be deposited with and distributed by the court in accordance with the interest of the parties therein. Any share of stock or the interest of any member in a company, association or corporation hereafter acquired in violation of the provisions of section three of this act shall escheat to the State of California. Such escheat shall be adjudged and enforced in the same manner as provided in this section for the escheat of a leasehold or other interest in real property less than the fee.

Sec. 9. Every transfer of real property, or of an interest therein, though colorable in form, shall be void as to the state and the interest thereby conveyed or sought to be conveyed shall escheat to the state if the property interest involved is of such a character that an alien mentioned in section two hereof is inhibited from acquiring, possessing, enjoying or transferring it, and if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein.

A prima facie presumption that the conveyance is made with such intent shall arise upon proof of any of the following groups of facts:

(a) The taking of the property in the name of a person other than the persons mentioned in section two hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in section two hereof;

(b) The taking of the property in the name of a company, association or corporation, if the memberships or shares of stock therein held by aliens mentioned in section two hereof, together with the memberships or shares of stock held by others but paid for or agreed or understood to be paid for by such aliens, would amount to a majority of the membership or the issued capital stock of such company, association or corporation;

(c) The execution of a mortgage in favor of an alien mentioned in section two hereof if said mortgagee is given possession, control or management of the property.

The enumeration in this section of certain presumptions shall not be so construed as to preclude other presumptions or inferences that reasonably may be made as to the existence of intent to prevent, evade or avoid escheat as provided for herein.

Sec. 10. If two or more persons conspire to effect a transfer of real property, or of an interest therein, in violation of the provisions hereof, they are punishable by imprisonment in the county jail or state penitentiary not exceeding two years, or by a fine not exceeding five thousand dollars, or both.

Sec. 11. Nothing in this act shall be construed as a limitation upon the power of the state to enact laws with respect to the acquisition, holding or disposal by aliens of real property in this state.

Sec. 12. All acts and parts of acts inconsistent or in conflict with the provisions hereof are hereby repealed; provided, that—

(a) This act shall not affect pending actions or proceedings, but the same may be prosecuted and

defended with the same effect as if this act had not been adopted;

(b) No cause of action arising under any law of this state shall be affected by reason of the adoption of this act whether an action or proceeding has been instituted thereon at the time of the taking effect of this act or not and actions may be brought upon such causes in the same manner, under the same terms and conditions, and with the same effect as if this act had not been adopted;

(c) This act in so far as it does not add to, take from or alter an existing law, shall be construed as a continuation thereof.

Sec. 13. The legislature may amend this act in furtherance of its purpose and to facilitate its operation.

Sec. 14. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The people hereby declare that they would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional."

COCKRILL ET AL. *v.* PEOPLE OF CALIFORNIA.

ERROR TO CALIFORNIA DISTRICT COURT OF APPEAL, THIRD APPELLATE DISTRICT.

No. 182. Argued March 6, 1925.—Decided May 11, 1925.

By the California Alien Land Law, under which acquisition, use or control of agricultural land is forbidden to aliens not eligible to citizenship under the laws of the United States and interests which such persons can not take are to escheat to the State when conveyed with intent to avoid that result, it is provided that a *prima facie* presumption that conveyance is made with that intent shall arise upon proof of the taking of the property in the name of a person not inhibited if the consideration is paid, or

agreed or understood to be paid, by an alien of the disqualified classes—In a prosecution for conspiracy to violate the statute, where the conveyance was taken by an American citizen and the consideration paid by an ineligible Japanese, but with intent, as it was claimed, that the interest should be held for his children, who were American citizens by birth, *held;* That the statutory presumption of intent is consistent with the due process and equal protection clauses of the Fourteenth Amendment and with the provision of the treaty with Japan guaranteeing to the subjects of the parties to it protection of persons and property and enjoyment in that respect of the rights and privileges granted native citizens. Pp. 261, 262.

62 Cal. App. 22, affirmed.

ERROR to a judgment of the California District Court of Appeal affirming a sentence for conspiracy to violate the Alien Land Law of that State. The Supreme Court of California had refused a petition for review.

Mr. Algernon Crofton, with whom *Mr. Charles A. Wetmore, Jr.,* was on the brief, for plaintiff in error.

Mr. F. L. Guerena for defendant in error. *Messrs. U. S. Webb,* Attorney General of California, *Frank English, John H. Riordan* and *J. Charles Jones,* Deputy Attorneys General, were on the brief.

MR. JUSTICE BUTLER delivered the opinion of the Court.

Plaintiffs in error were convicted in the superior court of Sonoma County, California, of conspiracy to effect a transfer of real property in violation of the Alien Land Law of that State. Judgment was affirmed by the district court of appeal. 62 Cal. App. 22. A petition to have the case heard and determined in the Supreme Court of California was denied. The case is here on writ of error. § 237, Judicial Code.

Under the Alien Land Law, Japanese subjects who are not eligible to citizenship under the laws of the United

States are not permitted to acquire, use or control agricultural lands in California. Statutes of California, 1921, p. lxxxiii. Treaty of February 21, 1911, 37 Stat. 1504. *Porterfield* v. *Webb*, 263 U. S. 225; *Webb* v. *O'Brien*, 263 U. S. 313; *Frick* v. *Webb*, 263 U. S. 326; *Terrace* v. *Thompson*, 263 U. S. 197. Section 9 provides: "Every transfer of real property, or of an interest therein, though colorable in form, shall be void as to the state and the interest thereby conveyed or sought to be conveyed shall escheat to the state if the property interest involved is of such a character that an alien mentioned in section two hereof [one not eligible to citizenshi under the laws of the United States] is inhibited from acquiring, possessing, enjoying or transferring it, and if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein. A prima facie presumption that the conveyance is made with such intent shall arise upon proof of . . . the taking of the property in the name of a person other than the persons mentioned in section two hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in section two hereof; . . ." Section 10 provides that, if two or more persons conspire to effect a transfer of real property or of any interest therein in violation of the provisions of the statute, they shall be punishable by fine or imprisonment or both.

Plaintiff in error Cockrill is an American, and Ikada is a Japanese subject not eligible to citizenship. They entered into an agreement to purchase certain agricultural lands and to take title in the name of Cockrill. Ikada furnished the money which was paid on account of the purchase price, and, upon the making of the contract, took possession of the property. Cockrill had no interest in the land; and the prosecution maintained that he made the contract with the seller and intended to take the deed and hold the land in trust for Ikada. But

plaintiffs in error represented that the land was being acquired for and was to be owned by the children of Ikada, who are natives of the United States and entitled to take and hold such lands. See *Estate of Tetsubumi Yano*, 188 Cal. 645, 649. The court included in its charge to the jury the above quoted provisions of section 9. Plaintiffs in error assert that the rule of evidence so declared violates the equal protection clause of the Fourteenth Amendment and also the treaty between the United States and Japan.

It is not, and could not reasonably be, suggested that the statute is repugnant to the due process clause. It does not operate to preclude any defense. The inference that payment of the purchase price by one from whom the privilege of acquisition is withheld and the taking of the land in the name of one of another class are for the purpose of getting the control of the land for the ineligible alien is not fanciful, arbitrary or unreasonable. There is a rational connection between the facts and the intent authorized to be inferred from them. The statute involves no attempt to relieve the prosecution of the burden of proving guilt beyond reasonable doubt. It merely creates a presumption which may be overcome by evidence sufficient to raise a reasonable doubt. See *Yee Hem* v. *United States, ante*, p. 178; *Mobile, J. & K. C. R. R.* v. *Turnipseed*, 219 U. S. 35, 43; *People* v. *Rodriguez*, 182 Cal. 197.

The statute is not repugnant to the equal protection clause. The rule of evidence applies equally and without discrimination to all persons—to citizens and eligible aliens as well to the ineligible. In the application of the law at the trial, no distinction was made between the citizen and the Japanese. Plaintiffs in error maintain that invalidity results from the fact that, where payment of the purchase price is made by an ineligible alien, the law creates a presumption of a purpose to pre-

vent, evade or avoid escheat, while no such presumption arises where such payment is made by a citizen or eligible alien. But there are reasonable grounds for the distinction. Conveyances to ineligible Japanese are void as to the State and the lands conveyed escheat. Payment by such aliens for agricultural lands taken in the names of persons not of that class reasonably may be given a significance as evidence of intent to avoid escheat not attributable to like acts of persons who have the privilege of owning such lands. The equal protection clause does not require absolute uniformity, or prohibit every distinction in the laws of the State between ineligible aliens and other persons within its jurisdiction. The State has a wide discretion and may classify persons on bases that are reasonable and germane having regard to the purpose of the legislation. *Truax* v. *Corrigan*, 257 U. S. 312, 337. This is well illustrated by the Alien Land Laws. *Terrace* v. *Thompson*, *supra*, 218; *Porterfield* v. *Webb*, *supra*, 233; *Webb* v. *O'Brien*, *supra*, 324; *Frick* v. *Webb*, *supra*, 333. The fact that in California all privileges in respect of the acquisition, use and control of the land for agricultural purposes are withheld from ineligible Japanese constitutes a reasonable and valid basis for the rule of evidence.

It is the third paragraph of Article I of the treaty that plaintiffs in error contend is violated. The treaty provision is, "The citizens or subjects of each of the High Contracting Parties shall receive, in the territories of the other, the most constant protection and security for their persons and property, and shall enjoy in this respect the same rights and privileges as are or may be granted to native citizens or subjects, on their submitting themselves to the conditions imposed upon the native citizens or subjects." It is plain that the treaty does not furnish any protection to Japanese subjects in this country against the application of a rule of evidence created

by state enactment that is not given them by the due process and equal protection clauses of the Fourteenth Amendment. As the law does not contravene these constitutional provisions, it must be held not to violate the treaty.

Judgment affirmed.